



CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 98-195, CD1

RESOLUTION

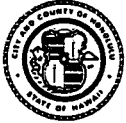
AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF REVENUE BONDS OF THE CITY AND COUNTY OF HONOLULU, HAWAII, FOR THE PURPOSES OF THE WASTEWATER SYSTEM OF THE CITY AND COUNTY; COVENANTING AS TO ESTABLISHMENT, MAINTENANCE, REVISION AND COLLECTION OF CHARGES AND RATES FOR THE USE AND SERVICES OF SAID WASTEWATER SYSTEM AND THE COLLECTION AND DISBURSEMENT OF THE REVENUES DERIVED THEREFROM; PLEDGING THE NET REVENUES DERIVED FROM SAID WASTEWATER SYSTEM ON A JUNIOR AND SUBORDINATE BASIS TO THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON SAID BONDS AS THE SAME FALL DUE; CREATING AND ESTABLISHING CERTAIN FUNDS, ACCOUNTS AND SUBACCOUNTS; SETTING FORTH THE LIMITATIONS OR CONDITIONS UPON THE ISSUANCE BY THE CITY AND COUNTY OF ADDITIONAL BONDS PAYABLE FROM THE AFORESAID REVENUES; AND MAKING OTHER COVENANTS AND AGREEMENTS IN CONNECTION WITH THE FOREGOING.

WHEREAS, the City and County of Honolulu, Hawaii (the "City and County") has the full and complete power and authority under and pursuant to Chapter 46, Hawaii Revised Statutes, and the City Charter of the City and County to manage, control and operate wastewater systems owned and under the jurisdiction of the City and County, together with all materials, supplies and equipment and all real and personal property used or useful in connection with such wastewater systems, and has pursuant to such authority managed, controlled and operated such wastewater systems;

WHEREAS, the City and County has full and complete power and authority under and pursuant to the Constitution and statutes of the State of Hawaii, including, particularly, Chapter 49, Hawaii Revised Statutes, and the City Charter of the City, to issue revenue bonds to finance additions, improvements, enlargements, acquisitions, extensions, expansion and betterments to and other purposes of the wastewater systems of the City and County;

WHEREAS, the Council of the City and County of Honolulu, pursuant to a First Bond Resolution adopted on August 5, 1998 (hereafter defined), has heretofore authorized an issue of revenue bonds of the City and County payable from the revenues of the Wastewater System (hereinafter defined) of the City and County after payment of operating expenses of the

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Wastewater System in order to finance additions, improvements, enlargements, acquisitions, extensions, expansion and betterments to and other purposes of the Wastewater System; and

WHEREAS, the First Bond Resolution establishes a Subordinate Obligation Account and permits the issuance of bonds, notes or other evidences of indebtedness of the City and County payable therefrom; and

WHEREAS, the Council of the City and County hereby finds and determines that it is necessary and advisable and in the best interest of the City and County that the City and County provide for the issuance from time to time of an additional issue of revenue bonds payable from the revenues of the Wastewater System of the City and County after payment of operating expenses of the Wastewater System from revenues credited to the Subordinate Obligation Account created by the First Bond Resolution, which credit is subordinate to credits to provide for the payment of principal of and interest on bonds issued under the First Bond Resolution, interest on bond anticipation notes issued under the First Bond Resolution, required reserves therefor and for reasonable and necessary working capital as operating reserves for the Wastewater System in order to finance additions, improvements, enlargements, acquisitions, extensions, expansion and betterments to and other purposes of the Wastewater System; and

WHEREAS, the Council of the City and County hereby finds and determines that it is in the best interest of the City and County to adopt this Resolution authorizing an issue of wastewater system revenue bonds to be issued from time to time in series, and making certain pledges, agreements and covenants with respect to said bonds and the operation and maintenance of the Wastewater System;

BE IT RESOLVED BY THE COUNCIL OF THE CITY AND COUNTY OF HONOLULU:



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ARTICLE I

DEFINITIONS; CONTRACT AND AUTHORITY

Section 1.01. Definitions of Special Terms. Unless the context shall clearly indicate some other meaning or may otherwise require, the terms defined in this Section shall, for all purposes of this resolution and of any resolution or other instrument amendatory hereof or supplemental hereto and of any certificate, opinion, instrument or document herein or therein mentioned, have the meanings herein specified, with the following definitions to be equally applicable to both the singular and plural forms of any terms herein defined and *vice versa*:

"Accreted Value" means, with respect to any Capital Appreciation Bond, (i) as of any Valuation Date, the amount set forth for such date in the Series Resolution authorizing such Bond or in a Series Certificate relating to such Bond and (ii) as of any date other than a Valuation Date, the sum of (a) the Accreted Value on the preceding Valuation Date and (b) the product of (1) a fraction, the numerator of which is the number of days having elapsed from the preceding Valuation Date and the denominator of which is the number of days from such preceding Valuation Date to the next succeeding Valuation Date, calculated based on the assumption that Accreted Value accrues during any semi-annual period in equal daily amounts on the basis of a year of twelve thirty-day months, and (2) the difference between the Accreted Values for such Valuation Dates.

"Accrued Debt Service" means, as of any date of computation and with respect to the Bonds of any Series, an amount equal to the sum of: (i) interest on such Bonds accrued and unpaid and to accrue to the end of the then current calendar month, and (ii) principal, Sinking Fund Installment and redemption premium which are due and unpaid for such Bonds and that portion of the principal, unsatisfied balance of any Sinking Fund Installment (as determined in accordance with Section 6.03) and redemption premium for such Bonds next due which would have accrued to the end of such calendar month if deemed to accrue monthly from a date one year prior to its due date.

"Act" means Chapter 49, Hawaii Revised Statutes, and all laws amendatory or supplemental thereto.

"Additional Bonds Requirement" means the requirement set forth in clause (9) of subsection (A) of Section 3.04 for issuing a Series of Bonds.

"Aggregate Debt Service" means, for any period and as of any date of computation, the sum of the amounts of Debt Service for such period with respect to all Series of Bonds.



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"Annual Budget" means the budget adopted annually by the City Council as described in Section 8.14 hereof.

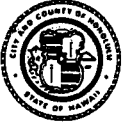
"Appreciated Value" means, with respect to any Deferred Income Bond (i) as of any Valuation Date, the amount set forth for such date in the Series Resolution authorizing such Bond or a Series Certificate relating to such Bond and (ii) as of any date other than a Valuation Date, the sum of (a) the Appreciated Value on the preceding Valuation Date and (b) the product of (1) a fraction, the numerator of which is the number of days having elapsed from the preceding Valuation Date and the denominator of which is the number of days from such preceding Valuation Date to the next succeeding Valuation Date, calculated based on the assumption that Appreciated Value accrues during any semi-annual period in equal daily amounts on the basis of a year of twelve thirty-day months, and (2) the difference between the Appreciated Values for such Valuation Dates, and (iii) as of any date of computation on and after the Interest Commencement Date, the Appreciated Value on the Interest Commencement Date.

"Assumed Long-Term Fixed Rate" means, with respect to Variable Rate Bonds, (i) a numerical rate of interest that such Bonds would have borne if issued as Fixed Rate Bonds with the same maturity and taking into account Sinking Fund Installments; and (ii) if the City and County has in connection with such Variable Rate Bonds entered into an Interest Rate Exchange Agreement which provides that the City and County is to pay to another person an amount determined based upon a fixed rate of interest on a notional amount and which requires the Counterparty to pay to the City and County an amount equal to the amount by which interest on the notional amount stated therein at the rate borne by such Variable Rate Bonds exceeds the interest payable on such notional amount at a rate stated therein, the fixed rate or other rate of interest set forth in or determined in accordance with such agreement. With respect to the Bonds described in clause (i) of the preceding sentence, an Authorized Officer shall certify or cause the Remarketing Agent for such Series of Variable Rate Bonds or other qualified person to certify such Assumed Long-Term Fixed Rate on the issue date of such Bonds, taking into account such market factors as such Authorized Officer or such Remarketing Agent or such qualified person shall deem necessary or appropriate.

"Authorized Newspapers" means *The Bond Buyer*, *The Wall Street Journal* or any other financial newspaper of national circulation printed in the English language and customarily published on each Business Day, as designated by an Authorized Officer.

"Authorized Officer" means the Director of Budget and Fiscal Services, any Deputy Director of Budget and Fiscal Services, the Director of Environmental Services or any other officer of the City and County designated by resolution of the City Council.

"Bonds" means Wastewater System Revenue Bonds issued from time to time pursuant to and under the authority of Section 3.01.



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"Bond Anticipation Notes" means obligations issued pursuant to Section 3.07.

"Bond Counsel" means an attorney or a firm of attorneys of nationally recognized standing in the field of law relating to municipal bonds selected by the City and County.

"Bondholder," or **"Holder of a Bond"** or **"Holder"** means the registered owner of any Bond which at the time shall be registered other than to bearer, or such holders' duly authorized attorney in fact, representative or assigns.

"Bond Registry" means the books maintained by the Paying Agent for the Bonds of a Series pursuant to Section 4.05 for the registration of the Bonds of such Series and Bondholders.

"Book Entry Bond" means a Bond authorized to be issued to, and issued to and registered in the name of, a Depository directly or indirectly for the beneficial owners thereof.

"Business Day" means any day which is not a Saturday, Sunday or a legal holiday in the State, the State of New York or a day on which banking institutions chartered by the State, the State of New York or the United States of America are legally authorized to close in the City and County of Honolulu, Hawaii or The City of New York.

"Capital Appreciation Bond" means any Bond as to which interest is compounded on each Valuation Date therefor and is payable only at the maturity or prior redemption thereof.

"City and County" means the City and County of Honolulu, Hawaii.

"City Charter" means the 1973 Revised Charter of the City and County of Honolulu (1994 Edition), as the same may be amended from time to time.

"City Code" means the Revised Ordinances of Honolulu 1990, as the same may be amended from time to time.

"City Council" mean the Council of the City and County.

"Code" means the Internal Revenue Code of 1986, as amended, and any successor statutes thereto, and any applicable regulations issued thereunder.

"Common Reserve Subaccount" means the Common Reserve Subaccount created in Section 6.01.

"Common Reserve Subaccount Requirement" means, as of any date of computation, an amount equal to the greatest amount of Aggregate Debt Service for the then current or any future Fiscal Year on all Outstanding Bonds entitled to the benefit of the Common Reserve Subaccount;



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provided, however, that if upon issuance of a Series of Bonds entitled to the benefit of the Common Reserve Subaccount, such amount would require moneys to be credited to the Common Reserve Subaccount from such Bond proceeds in an amount in excess of the maximum amount permitted under the Code, the Common Reserve Subaccount Requirement shall mean an amount equal to the sum of the Common Reserve Subaccount Requirement immediately preceding issuance of such Bonds and the maximum amount permitted under the Code to be deposited therein from the proceeds of such Bonds, as certified by an Authorized Officer; *provided further, however*, that for purposes of this definition, Aggregate Debt Service shall be computed with respect to each Variable Rate Bond entitled to the benefit of the Common Reserve Subaccount by using the Assumed Long-Term Fixed Rate applicable thereto.

"Consulting Engineer" means the engineer or engineering firm or corporation retained from time to time pursuant to **Section 8.05** to perform the acts and carry out the duties provided for such Consulting Engineer in the Resolution.

"Costs" means all costs of any Improvement and shall include, but shall not be limited to, all costs and estimated costs of the issuance of the Bonds, all architectural, engineering, inspection, financial and legal expenses, the cost of causing the payment of the principal or interest or both of the Bonds to be insured or guaranteed, the initial cost of any Support Facility or Interest Rate Exchange Agreement obtained or permitted by the Act, and interest which it is estimated will accrue during the construction of any Improvements and for six (6) months thereafter.

"Counterparty" means any person with which the City and County has entered into an Interest Rate Exchange Agreement.

"Debt Service" means, as of any particular date of computation, with respect to any Bonds and with respect to any period, the aggregate of the amounts to be paid or set aside in such period for the payment (or retirement) of the principal and Redemption Price (if any) of, and interest on, such Bonds; *provided, however*, that the term "Debt Service" shall not include interest on Bonds to the extent it is to be paid from amounts on credit to a Series Improvement Interest Subaccount (as defined in **Section 6.08**), amounts on credit to the Debt Service Subaccount or any other provisions made for the payment of interest.

"Debt Service Subaccount" means the Debt Service Subaccount in the Subordinate Obligation Account created in **Section 6.01**.

"Deferred Income Bond" means any Bond as to which interest accruing thereon prior to the Interest Commencement Date of such Bond is compounded on each Valuation Date for such Deferred Income Bond, and as to which interest accruing after the Interest Commencement Date is payable on the interest payment dates each Bond Year as established in the Series Resolution



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authorizing the issuance of such Deferred Income Bonds or a Series Certificate relating to such Deferred Income Bonds.

"Department" means the Department of Environmental Services of the City and County as established by the City Charter, or the successor thereto.

"Depository" means any bank, national banking association or trust company selected and appointed by an Authorized Officer in accordance with Section 7.01 as a depository of moneys and Investment Securities held under the provisions of the Resolution.

"Depository" means The Depository Trust Company, New York, New York, a limited purpose trust company organized under the laws of the State of New York, or its nominee, or any other person, firm, association or corporation designated in the Series Resolution authorizing a Series of Bonds or a Series Certificate relating to such Series of Bonds to serve as securities depository for the Bonds of such Series.

"Director of Budget and Fiscal Services" means the Director of Budget and Fiscal Services of the City and County appointed pursuant to and having the powers as set forth in the Act and the City Charter, or any successor.

"Director of Environmental Services" means the Director of Wastewater Management of the City and County appointed pursuant to and having the powers as set forth in the City Charter, or any successor.

"Exempt Obligation" means an obligation of any state or territory of the United States of America, any political subdivision of any state or territory of the United States of America, or any agency, authority, public benefit corporation or instrumentality of such state, territory or political subdivision, the interest on which is excludable from gross income under Section 103 of the Code, and which, at the time an investment therein is made or such obligation is deposited in any fund or account hereunder, is rated, without regard to qualification of such rating by symbols such as "+" or "-" or numerical notation, "Aa" or better by Moody's and "AA" or better by S&P, or, if such obligation is not rated by Moody's or S&P, or, if such obligation is rated by neither Moody's nor S&P, has been assigned a comparable rating by another nationally recognized rating service, but in no event rated lower than the lowest rating on Outstanding Bonds assigned by Moody's or S&P.

"First Bond Resolution" means Resolution No. 98-193 of the City and County adopted by the City Council on _____, as from time to time amended and supplemented as permitted thereby.

"First Resolution Obligations" means bonds, notes and other evidences of indebtedness issued under and pursuant to the First Bond Resolution.



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"Fiscal Year" means the twelve month period established by the City and County or provided by law from time to time as its fiscal year, and which, as of the date of adoption of the Resolution, is the twelve month period commencing on July 1 of any year and ending on June 30 of the following year.

"Fixed Rate Bonds" means any Bonds issued bearing interest at a fixed rate per annum from their dated date or such other date to their maturity date.

"Government Obligation" means a direct obligation of the United States of America, an obligation the principal of, and interest on, which are guaranteed by the United States of America, provided, that the full faith and credit of the United States of America is pledged to any such direct obligation or guarantee.

"Gross Proceeds" means, with respect to a Series of Tax-exempt Bonds the "gross proceeds" as defined in the Tax Certificate executed in connection with the issuance of such Series of Bonds, which definition shall be consistent with the provisions of the Code relating to the exclusion from gross income of holders of the interest on state and local government obligations for federal income taxation purposes.

"Improvement Fund" means the Improvement Fund described in Section 6.01 of the First Bond Resolution.

"Improvement Second Account" means the Improvement Second Account in the Improvement Fund, created pursuant to Section 6.01.

"Improvements" means the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of the Wastewater System.

"Interest Commencement Date" means, with respect to any particular Deferred Income Bond, the date prior to the maturity date thereof specified in the Series Resolution authorizing such Bond or a Series Certificate relating to such Bond, after which interest accruing on such Bond shall be payable on the interest payment date immediately succeeding such Interest Commencement Date and thereafter on the interest payment dates each Bond Year as established in the Series Resolution authorizing such Bond or a Series Certificate relating to such Bond.

"Interest Rate Exchange Agreement" means an agreement entered into by the City and County relating to Bonds of one or more Series which provides that during the term of such agreement the City and County is to pay to the Counterparty an amount based on the interest accruing at a fixed or variable rate per annum on a notional amount and that the Counterparty is to pay to the City and County either (i) an amount based on the interest accruing on such notional amount at a fixed, capped or variable rate per annum, in each case computed according to a formula set forth in such agreement, or that one shall pay to the other any net amount due under



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such agreement, or (ii) an amount based on the amount by which the rate per annum at which such Bonds bear interest exceeds a rate per annum stated in such agreement.

"Investment Agreement" means an agreement for the investment of moneys with a Qualified Financial Institution.

"Investment Securities" means any of the following, if and to the extent that the same are legal for the investment of funds of the Department:

- (i) Government Obligations;
- (ii) Investment Agreements;
- (iii) Direct obligations and fully guaranteed certificates of beneficial interest of the Export-Import Bank of the United States; consolidated debt obligations and letter of credit-backed issues of the Federal Home Loan Banks; participation certificates and senior debt obligations of the Federal Home Loan Mortgage Corporation ("FHLMCs"); debentures of the Federal Housing Administration; mortgage-backed securities (except stripped mortgage securities which are valued greater than par on the portion of unpaid principal) and senior debt obligations of Fannie Mae ("FNMA's"); participation certificates of the General Services Administration; guaranteed mortgage-backed securities and guaranteed participation certificates of the Government National Mortgage Association ("GNMA's"); guaranteed participation certificates and guaranteed pool certificates of the Small Business Administration; debt obligations and letter of credit-backed issues of the Student Loan Marketing Association; local authority bonds of the U.S. Department of Housing & Urban Development; guaranteed Title XI financings of the U.S. Maritime Administration; guaranteed transit bonds of the Washington Metropolitan Area Transit Authority; Resolution Funding Corporation securities.
- (iv) direct obligations of any state or territory of the United States of America or any subdivision or agency thereof whose unsecured, uninsured and unguaranteed general obligation debt is rated, at the time of purchase, "Aa" or better by Moody's and "AA" or better by S&P, or any obligation fully and unconditionally guaranteed by any state, subdivision or agency whose unsecured, uninsured and unguaranteed general obligation debt is rated, at the time of purchase, "Aa" or better by Moody's and "AA" or better by S&P;
- (v) commercial paper (having original maturities of not more than 270 days) rated, at the time of purchase, "P-1" by Moody's and "A-1" or better by S&P;



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(vi) Federal funds, unsecured certificates of deposit, time deposits or bankers acceptances (in each case having maturities of not more than 365 days) of any domestic bank including a branch office of a foreign bank which branch office is located in the United States, provided legal opinions are received to the effect that full and timely payment of such deposit or similar obligation is enforceable against the principal office or any branch of such bank, which, at the time of purchase, has a short-term "Bank Deposit" rating of "P-1" by Moody's and a "Short-Term CD" rating of "A-1" or better by S&P.

(vii) deposits of any bank or savings and loan association which has combined capital, surplus and undivided profits of not less than \$3 million, provided such deposits are continuously and fully insured by the Bank Insurance Fund or the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation ("FDIC");

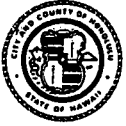
(viii) investments in money-market funds rated "Aaa" by Moody's, and "AAAm" or "AAAm-G" by S&P;

(ix) repurchase agreements collateralized by Government Obligations, GNMA's, FNMA's or FHLMC's with any registered broker/dealer subject to the Securities Investors' Protection Corporation jurisdiction or any commercial bank insured by the FDIC, if such broker/dealer or bank has an uninsured, unsecured and unguaranteed obligation rated in the top two rating tiers by Moody's, and "AA-1" or "AA-" or better by S&P, provided:

(a) a master repurchase agreement or specific written repurchase agreement governs the transaction; and

(b) the securities are held free and clear of any lien by the Depositary or an independent third party acting solely as agent ("Agent") for the Depositary, and such third party is (i) a Federal Reserve Bank, or (ii) a bank which is a member of the Federal Deposit Insurance Corporation and which has combined capital, surplus and undivided profits of not less than \$50 million, and the Depositary shall have received written confirmation from such third party that it holds such securities, free and clear of any lien, as agent for the Depositary; and

(c) a perfected first security interest under the Uniform Commercial Code, or book entry procedures prescribed at 31 C.F.R. 306.1 *et seq.* or 31 C.F.R. 350.0 *et seq.* in such securities is created for the benefit of the Depositary; and



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(d) the repurchase agreement has a term of 3 years or less, and the Depository or the Agent will value the collateral securities no less frequently than weekly and will liquidate the collateral securities if any deficiency in the required collateral percentage is not restored within two business days of such valuation; and

(e) the fair market value of the securities in relation to the amount of the repurchase obligation, including principal and interest, is equal to at least 100%;

(x) investments in any mutual fund whose portfolio is limited to Government Obligations and the investments described in clause (ii) of this definition of Investment Securities; and

(xi) student loan resource securities including student loan auction rate securities, student loan asset-backed notes, student loan program revenue notes and bonds, and securities issued pursuant to Rule 144A of the Securities Act of 1933, including any private placement issues, issued with either bond insurance or over collateralization guaranteed by the United States Department of Education, provided all insurers maintain an "Aaa" by Moody's, "AAA" by S&P.

"Maximum Interest Rate" means, with respect to any particular Variable Rate Bond, a numerical rate of interest per annum, which shall be set forth in the Series Resolution authorizing such Bond or a Series Certificate relating to such Bond, that shall be the maximum rate per annum at which such Bond may bear interest at any time.

"Minimum Interest Rate" means, with respect to any particular Variable Rate Bond, a numerical rate of interest per annum, if any, set forth in the Series Resolution authorizing such Bond or a Series Certificate relating to such Bond, that shall be the minimum rate per annum at which such Bond may bear interest at any time.

"Moody's" means Moody's Investors Service, Inc., its successors and their assigns, and, if such corporation shall for any reason no longer perform the functions of a securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized rating agency, if any, designated by the Director of Budget and Fiscal Services.

"Net Revenue Requirement" means with respect to any Fiscal Year or any period, an amount equal to the greater of: (i) the sum of (a) the Aggregate Debt Service (as defined in the First Bond Resolution) under the First Bond Resolution and the Aggregate Debt Service in such Fiscal Year or such period and (b) the Required Deposits for such Fiscal Year or such period; or (ii) 1.10 times the Aggregate Debt Service (as defined in the First Bond Resolution) under the First Bond Resolution and 1.10 times the Aggregate Debt Service in such Fiscal Year or such



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period plus 1.00 times the aggregate Support Facility Reimbursement Obligations outstanding as of the end of such Fiscal Year or such period.

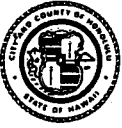
"Net Revenues" means, with respect to any period, the Revenues during such period less amounts required to pay Operation and Maintenance Expenses.

"Operation and Maintenance Expenses" means the costs and expenses of operating and maintaining the Wastewater System, including, without limiting the generality of the foregoing: (i) all expenses includable in the operation and maintenance expense accounts of the Department relating to the Wastewater System according to generally accepted accounting principles, exclusive of depreciation and amortization of property values or losses; (ii) to the extent not included in the preceding clause (i) or paid from Bond proceeds or otherwise, the Department's share of the costs and expenses of operating and maintaining any plants and properties jointly owned with others; and (iii) the amounts, if any, payable to the United States Treasury Department pursuant to Section 148 of the Code in respect of Tax-exempt Bonds.

"Opinion of Counsel" means with respect to the City and County a written opinion of counsel selected by the Director of Budget and Fiscal Services who is not an employee of the City and County, and which, with respect to Federal income tax law and securities law relating to obligations issued by state and local governmental units, is Bond Counsel. Any Opinion of Counsel may be based (insofar as it relates to factual matters or information which is in the possession of the City and County) upon a Written Certificate of the City and County unless such counsel knows, or in the exercise of reasonable care should have known, that such Written Certificate is erroneous.

"Option Bond" means any Bond which by its terms may be tendered by and at the option of the Holder thereof for redemption by the City and County prior to the stated maturity thereof or for purchase thereof.

"Outstanding" or "outstanding" when used with reference to Bonds means, as of any date, Bonds theretofore or thereupon issued pursuant to the Resolution, except: (a) any Bonds canceled by a Paying Agent or paid at or prior to such date; (b) Bonds in lieu of or in substitution for which other Bonds shall have been delivered pursuant to the Resolution; (c) Bonds deemed to be no longer outstanding hereunder as provided in Section 12.01; and (d) Option Bonds tendered or deemed tendered in accordance with the provisions of the Series Resolution authorizing such Bonds or the Series Certificate relating to such Bonds which have been purchased by or on behalf of the City and County and in lieu of or substitution for which another Bond shall have been authenticated and delivered pursuant to Article III, *provided* that interest thereon shall have been paid through such tender or purchase date thereof and the purchase price thereof shall have been paid or amounts are available for such payment as provided herein and in the Series Resolution authorizing such Bonds or the Series Certificate relating to such Bonds.



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"Parity Support Facility Reimbursement Obligation" means the obligation of the City and County described in subsection (C) of Section 3.11 to directly reimburse the Support Facility Provider of any Support Facility for amounts paid by such Support Facility Provider under such Support Facility or a Counterparty under an Interest Rate Exchange Agreement for amounts paid thereunder, on a parity with the obligation of the City and County to pay the Bonds, whether or not such obligation to reimburse is evidenced by a promissory note or other similar instrument.

"Paying Agent" means, as to Bonds of any particular Series, the Director of Budget and Fiscal Services or the bank or trust company designated for the payment of the principal and Redemption Price (if any) of, and interest on, the Bonds of such Series in the Series Resolution authorizing the issuance of such Series or the Series Certificate relating to such Series.

"Principal Office" means the office designated in writing to the Director of Budget and Fiscal Services by a Paying Agent, at which payment and registration of Bonds may be made.

"Qualified Financial Institution" means (i) a securities dealer, the liquidation of which is subject to the Securities Investors Protection Corporation or other similar corporation and which is on the Federal Reserve Bank of New York's list of primary government securities dealers, *provided*, such dealer has been approved by Moody's and S&P, (ii) a bank, a trust company, a national banking association, a corporation subject to registration with the Board of Governors of the Federal Reserve System under the Bank Holding Company Act of 1956 or any successor provisions of law, a federal branch pursuant to the International Banking Act of 1978 or any successor provisions of law, a domestic branch or agency of a foreign bank, which branch or agency is duly licensed or authorized to do business under the laws of any state or territory of the United States of America, a savings bank, a savings and loan association, an insurance company or association chartered or organized under the laws of any state of the United States of America, (iii) a corporation affiliated with or which is a subsidiary of any entity described in (i) or (ii) above or which is affiliated with or a subsidiary of a corporation which controls or wholly owns any such entity or which is a subsidiary of a foreign insurance company or (iv) the Government National Mortgage Association or any successor thereto, the Federal National Mortgage Association or any successor thereto, or any other federal agency or instrumentality approved by the Director of Budget and Fiscal Services; *provided, however*, that in the case of any entity described in (ii) or (iii) above, the unsecured or uncollateralized long-term debt obligations of which, or obligations secured or supported by a letter of credit, contract, agreement or surety bond issued by any such organization, have been assigned a credit rating by Moody's and S&P which is not lower than the rating then assigned by such entity (*i.e.*, at the time an Investment Agreement is entered into) to the Outstanding Bonds of the Series of Bonds with respect to which such Investment Agreement has been entered into.

"Rate Stabilization Account" means the Rate Stabilization Account in the Sewer Fund, created in Section 6.01 of the First Bond Resolution.



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"Rating Agency" means any nationally recognized credit rating agency which has rated all or any Series of Bonds at the request of the Director of Budget and Fiscal Services, and shall include Moody's and S&P.

"Rebatable Amount" means, with respect to a Series of Bonds, (i) the amount by which the earnings on the Gross Proceeds of such Series of Bonds exceeds the amount which would have been earned thereon if such Gross Proceeds were invested at a yield equal to the yield on such Series of Bonds, as such yield is determined in accordance with the Code; (ii) amounts earned on the investment of the excess described in clause (i); and (iii) any other amount required by the Code.

"Rebate Subaccount" means the Rebate Subaccount in the Subordinate Obligation Account created in Section 6.01.

"Record Date" means, with respect to any Series of Bonds, (i) with respect to the payment of interest, the fifteenth (15th) day (whether or not a Business Day) of the month preceding an interest payment date; (ii) with respect to notice of redemption, the forty-fifth (45th) day (whether or not a Business Day) preceding the date of redemption; or (iii) such other day as may be provided in the Series Resolution authorizing the issuance of such Series or the Series Certificate relating to such Series.

"Redemption Price" means, with respect to any Bond, the principal amount thereof plus the applicable redemption premium, if any, payable upon redemption thereof pursuant to the Resolution or any Series Resolution or any Series Certificate.

"Refunded Municipal Obligations" means Exempt Obligations which are rated in the highest rating category by Moody's and S&P and provision for the payment of the principal of and interest on which shall have been made by an irrevocable deposit with a trustee or escrow agent of Governmental Obligations, which are held by a bank or trust company organized and existing under the laws of the United States of America or any state, the District of Columbia or possession thereof in the capacity as custodian, the maturing principal of and interest on which Government Obligations shall be sufficient to pay, when due, the principal of and interest on such Exempt Obligations.

"Refunding Bonds" means Bonds issued pursuant to Section 3.06 for refunding purposes.

"Reimbursable Obligations" means reimbursable general obligation bonds issued and delivered or to be hereafter issued and delivered by the City and County to finance certain costs related to the Wastewater System, the debt service on which the Department is required by State law to reimburse the City and County's General Fund.



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"Reimbursable Obligation Account" means the Reimbursable Obligation Account created in Section 6.01 of the First Bond Resolution.

"Reimbursable Obligation Requirement" means with respect to any period of time, the amount required to be credited to the Reimbursable Obligation Account pursuant to the ordinances and resolutions of the City Council authorizing the issuance and delivery of Reimbursable Obligations.

"Remarketing Agent" means the Remarketing Agent for a Series of Bonds appointed pursuant to a Series Resolution or Series Certificate applicable thereto, or any successor.

"Remarketing Agreement" means an agreement by and between the City and County and another person pursuant to which Option Bonds tendered for purchase or redemption are to be remarketed to the public by such other person.

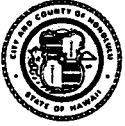
"Renewal and Replacement Account" means the Renewal and Replacement Account in the Sewer Fund, created pursuant to Section 6.01 of the First Bond Resolution.

"Required Deposits" means, for any period, (i) the Required Deposits (as such term is defined in the First Bond Resolution) under the First Bond Resolution exclusive of transfers from the Sewer Fund to the Subordinate Obligation Account; and (ii) the amounts, if any, required: (a) to be paid into the Rebate Subaccount, the Common Reserve Subaccount, each Separate Series Reserve Subaccount, and the Third Lien Obligation Subaccount, and (b) to pay Support Facility Reimbursement Obligations.

"Resolution" means this Second Bond Resolution as from time to time amended or supplemented by one or more Supplemental Resolutions.

"Revenue Bond Index" means the thirty (30) year Revenue Bond Index of *The Bond Buyer*, a publication in New York, New York, or any successor publication maintaining such Index or in the event *The Bond Buyer* or any successor publication does not maintain such Index, an equivalent index with the same or similar components as the Revenue Bond Index.

"Revenues" means (i) the Revenues (as such term is defined in the First Bond Resolution) under the First Bond Resolution; (ii) all income from investments of moneys held under the Resolution including investment income on the Improvement Second Account created by the Resolution but not including any earnings on the Rebate Subaccount or Third Lien Obligation Subaccount; and (iii) all payments made by Counterparties pursuant to Interest Rate Exchange Agreements.



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"S&P" means Standard & Poor's Ratings Group, a division of The McGraw- Hill and Companies, Inc., its successors and their assigns, and, if such corporation shall for any reason no longer perform the functions of a securities rating agency, S&P shall be deemed to refer to any other nationally recognized rating agency designated by the Director of Budget and Fiscal Services.

"Separate Series Reserve Subaccount" means a Separate Series Reserve Subaccount in the Subordinate Obligation Account, created pursuant to a Series Resolution authorizing a Series of Bonds or the related Series Certificate in accordance with **Section 6.01**, to provide additional security to the Bonds of such Series.

"Separate Series Reserve Subaccount Requirement" means, as of any date of computation, the amount set forth in a Series Resolution authorizing a Series of Bonds or the related Series Certificate that is required to be maintained as of such date in the Separate Series Reserve Subaccount created to provide additional security for the Bonds of such Series.

"Serial Bonds" means Bonds which mature serially and which are not Term Bonds.

"Series," "Series of Bonds" or "Bonds of a Series" means all Bonds designated as being of the same series issued and delivered on original issuance in a simultaneous transaction, and any Bonds thereafter delivered in lieu thereof or in substitution therefor pursuant to the Resolution.

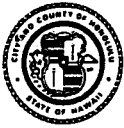
"Series Certificate" means a certificate of an Authorized Officer fixing the terms, conditions and other details of Bonds in accordance with the delegation of power to do so hereunder or under a Series Resolution.

"Series Resolution" means a resolution authorizing the issuance of a Series of Bonds adopted by the City Council pursuant to **Article III**.

"Sewer Fund" means the Sewer Fund described in **Section 6.01**.

"Sinking Fund Installment" means an amount so designated which is established pursuant to **Section 3.03**. The portion of any such Sinking Fund Installment remaining after the deduction of any such amounts credited pursuant to **subsection (A) of Section 6.03** toward the same (or the original amount of any such Sinking Fund Installment if no such amounts shall have been credited toward the same) shall constitute the unsatisfied balance of such Sinking Fund Installment for the purpose of calculation of Sinking Fund Installments due on a future date.

"State" means the State of Hawaii.



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"Subordinate Obligation Account" means the Subordinate Obligation Account created in Section 6.1 of the First Bond Resolution.

"Subordinate Obligations" means bonds, notes and other evidences of indebtedness issued pursuant to Section 3.08 of the First Bond Resolution, and include the Bonds issued under and pursuant to this Resolution.

"Supplemental Resolution" means any resolution adopted by the City Council and becoming effective pursuant to and in compliance with the provisions of Article X, which amends or supplements the provisions of the Resolution, any Series Resolution or any other Supplemental Resolution.

"Support Facility" means an irrevocable letter of credit, surety bond, loan agreement, standby purchase agreement or other agreement, facility or insurance or guaranty arrangement issued or extended by one or more Support Facility Providers, pursuant to which the City and County is entitled to obtain moneys to pay the principal or Redemption Price of Bonds due in accordance with their terms or tendered for purchase or redemption, plus accrued interest thereon to the date of payment, purchase or redemption thereof in accordance herewith and with the Series Resolution authorizing such Bonds or a Series Certificate relating to such Bonds, whether or not the City and County is in default hereunder.

"Support Facility Provider" means a bank, a trust company, a national banking association, an organization subject to registration with the Board of Governors of the Federal Reserve System under the Bank Holding Company Act of 1956 or any successor provisions of law, a federal branch pursuant to the International Banking Act of 1978 or any successor provisions of law, a savings bank, a savings and loan association, an insurance company or association chartered or organized under the laws of any state of the United States of America, the Government National Mortgage Association or any successor thereto, the Federal National Mortgage Association or any successor thereto, or any other federal agency or instrumentality approved by the City and County or a Counterparty.

"Support Facility Reimbursement Obligation" means the obligation of the City and County described in subsection (C) of Section 3.11 to directly reimburse the Support Facility Provider of a Support Facility for amounts paid thereunder or a Counterparty under an Interest Rate Exchange Agreement for amounts paid thereunder, whether or not such obligation to reimburse is evidenced by a promissory note or other similar instrument.

"Tax Certificate" means such tax certificates, instructions and other documents as may be executed by an Authorized Officer in connection with the issuance of Tax-exempt Bonds of a Series for the purpose of demonstrating compliance with the applicable provisions of the Code.



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"Tax-exempt Bonds" means Bonds the interest on which is intended by the City and County to be excluded from gross income of the Holders of such Bonds for federal income taxation purposes pursuant to the Code.

"Term Bonds" means Bonds the retirement or the redemption of which shall be provided for from moneys credited to the Debt Service Subaccount pursuant to **subsection (A) of Section 6.03**.

"Third Lien Obligations" means any bonds, notes or other evidences of indebtedness of the City and County payable from the Revenues, other than the First Resolution Obligations, the Bonds and the Reimbursable Obligations, issued in accordance with and complying with the provisions of **Section 3.08**.

"Third Lien Obligation Subaccount" means the Third Lien Obligation Subaccount in the Subordinate Obligation Account, created in **Section 6.01**.

"Third Lien Obligation Requirement" means with respect to any period of time, the amount required to be deposited in the Third Lien Obligation Subaccount pursuant to the resolution, indenture or other instruments of the City and County adopted by or entered into by the City and County in accordance with **Section 3.08** and providing for all payments with respect to Third Lien Obligations.

"Valuation Date" means (i) with respect to any Capital Appreciation Bond, the date or dates set forth in the Series Resolution authorizing such Bond or a Series Certificate relating to such Bond on which specific Accreted Values are assigned to such Capital Appreciation Bond, and (ii) with respect to any Deferred Income Bond, the date or dates prior to the Interest Commencement Date set forth in the Series Resolution authorizing such Bond or a Series Certificate relating to such Bond on which specific Appreciated Values are assigned to such Deferred Income Bond.

"Variable Rate Bonds" means any Bonds issued bearing interest at a rate per annum subject to adjustment from time to time based on the terms thereof, based upon an index, or otherwise calculated in a manner which precludes the actual rate for the entire term of such Bonds from being ascertainable in advance (*i.e.*, a "variable rate"); *provided, however*, that a Bond the interest rate on which shall have been fixed for the remainder of the term thereof shall constitute a Fixed Rate Bond and no longer be a Variable Rate Bond; *provided, further, however*, that in the case where a Bond bears a variable rate and is dated and has the same maturity as a Bond bearing a rate that is a constant rate minus the rate borne by the first bond (*i.e.*, an "inverse variable rate"), both Bonds shall constitute Fixed Rate Bonds and no longer be Variable Rate Bonds.



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"Wastewater General Account" means the Wastewater General Account in the Sewer Fund, created in Section 6.01 of the First Bond Resolution.

"Wastewater System" means the Wastewater System as defined in the First Bond Resolution.

"Wastewater System Facility Charge" means the wastewater system facility charge as defined in Section 14-1.2 of the City Code.

"Written Certificate of the City and County," "Written Direction of the City and County," "Written Request of the City and County," or "Written Statement of the City and County" means an instrument in writing signed on behalf of the City and County by an Authorized Officer thereof. Any such instrument and any supporting opinions or certificates may, but need not, be combined in a single instrument with any other instrument, opinion or certificate, and the two or more so combined shall be read and construed so as to form a single instrument. Any such instrument may be based, insofar as it relates to legal, accounting or engineering matters, upon the Opinion of Counsel, or opinion or certificate of accountants or the Consulting Engineer, unless the Authorized Officer signing such Written Certificate or Direction or Request or Statement knew, or in the exercise of reasonable care should have known, that the opinion or certificate with respect to the matters upon which such Written Certificate or Direction or Request or Statement may be based, as aforesaid, is erroneous. The same Authorized Officer, or the same counsel, accountant or engineer, as the case may be, need not certify or opine to all of the matters required to be certified to or opined upon under any provision of the Resolution, but different Authorized Officers, counsel, accountants or engineer may certify or opine to different facts, respectively.

Section 1.02. Definitions of General Terms. Unless the context shall clearly indicate otherwise or otherwise require, in the Resolution words importing persons include firms, partnerships, associations, corporations (public and private), public bodies and natural persons, and also include executors, administrators, trustees, receivers or other representatives.

Unless the context shall clearly indicate otherwise or otherwise require, in the Resolution the terms "herein," "hereunder," "hereby," "hereto," "hereof" and any similar terms, refer to the Resolution and to the Resolution as a whole and not to any particular section or subdivision hereof.

Unless the context shall clearly indicate otherwise or otherwise require, in the Resolution:

- (i) references to Articles, Sections and other subdivisions, whether by number or letter or otherwise, are to the respective or corresponding Articles, Sections or subdivisions of the Resolution as such Articles, Sections or subdivisions may be amended from time to time; and
- (ii) the word "heretofore" means before the time of adoption of the Resolution, the word "now"



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means at the time of adoption of the Resolution, and the word "hereafter" means after the time of adoption of the Resolution.

Section 1.03. *Authority for the Resolution.* The Resolution is adopted pursuant to the provisions of the Act and the City Charter.

Section 1.04. *Resolution and Bonds Constitute a Contract.* In consideration of the acceptance of the Bonds by those who shall hold the same from time to time, each of the obligations, duties, limitations and restraints imposed upon the City and County by the Resolution shall be deemed to be a covenant between the City and County and every Holder of the Bonds, and the Resolution and every provision and covenant hereof shall be deemed to be and shall constitute a continuing contract and agreement between the City and County and the Holders from time to time of the Bonds issued hereunder, to secure the full and final payment of the principal and Redemption Price of and interest on all Bonds which may from time to time be issued, executed, and delivered hereunder. The covenants and agreements herein set forth to be performed by the City and County shall be for the equal and proportionate benefit, security and protection of all Holders of the Bonds without preference, priority or distinction as to payment or security or otherwise of any of the Bonds over any of the others for any reason or cause whatsoever except as expressly provided in the Resolution, in a Series Resolution, a Series Certificate or a Supplemental Resolution, or in the Bonds.

Section 1.05. *Reservation of Right to Transfer Duties and Obligations and Rights and Benefits to Department.* The City Council expressly reserves the right to transfer all or a portion of the duties and obligations and rights and benefits of the City and County under the Resolution to the Department without obtaining the consent of any Holder of Bonds. Upon such transfer, references in the Resolution to the City Council shall be appropriately changed to mean the board or other governing body of the Department, and references in the Resolution to the City and County shall be changed to mean the Department. The Resolution may be restated and amended to reflect such transfer.



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ARTICLE II

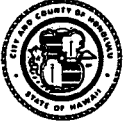
COMPUTATIONS; CERTIFICATES AND OPINIONS; EVIDENCE OF ACTION BY THE CITY AND COUNTY

Section 2.01. Computations. Unless the facts shall then be otherwise, all computations required for the purposes of the Resolution shall be made on the assumption that (i) the principal of and interest on bonds issued and outstanding under the First Bond Resolution and all Bonds shall be paid as and when the same become due; (ii) all credits required by the First Bond Resolution to be made to the Debt Service Account thereunder and by this Resolution to the Debt Service Subaccount shall be made in the amounts and at the times required by the First Bond Resolution and this Resolution, as applicable; and (iii) all bonds required by the First Bond Resolution to be redeemed from moneys credited to the Debt Service Account thereunder and all Bonds required by this Resolution to be redeemed from moneys credited to the Debt Service Subaccount shall be redeemed on the respective Sinking Fund Installment dates therefor in the amounts and at the times required by the First Bond Resolution or Resolution, as applicable.

Section 2.02. Certificates and Opinions. Except as otherwise specifically provided in the Resolution each certificate or opinion with respect to compliance with a condition or covenant provided for in the Resolution shall include: (i) a statement that the person making such certificate or opinion has read such covenant or condition; (ii) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (iii) a statement that, in the opinion of such person, an examination and investigation has been made as is necessary to enable the expression of an informed opinion as to whether or not such covenant or condition has been complied with; (iv) a statement as to whether or not, in the opinion of such person, such covenant or condition has been complied with; and (v) an identification of any other certificates or opinions relied on in such certificate or opinion.

Any Opinion of Counsel may be qualified by reference to the exercise of the constitutional powers of the United States of America, the sovereign police powers of the State, and judicial discretion and to bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights.

Section 2.03. Evidence of Action by the City and County. Except as otherwise specifically provided in the Resolution, any request, direction, command, order, notice, certificate or other instrument of, by or from the City and County shall be effective and binding upon the City and County for the purposes of the Resolution if signed by the person or persons



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authorized to execute the same by statute, City Charter or by-law or by a resolution or vote of the City and County.



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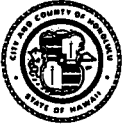
ARTICLE III

AUTHORIZATION AND ISSUANCE OF WASTEWATER SYSTEM REVENUE BONDS

Section 3.01. *Authorization of Bonds.* (A) There are hereby authorized to be issued hereunder and secured hereby revenue bonds of the City and County to be known as and entitled "Second Bond Resolution, Wastewater System Revenue Bonds". The Bonds may be issued hereunder from time to time in Series, pursuant and subject to the terms, conditions and limitations of the Resolution, in such amounts as may be determined by the City Council, for any lawful use or purpose relating to the Wastewater System, including, without limitation, payment of all or a portion of the Costs of any Improvement or refunding any First Resolution Obligation, Bond, Third Lien Obligation or Reimbursable Obligation. The principal amount of Bonds which may be issued hereunder and secured hereby shall not be limited, except as provided hereby or as may be provided by law.

(B) Each Series of Bonds shall be issued pursuant to a Series Resolution satisfying the requirements of **Section 3.03**; *provided, however*, that nothing contained herein shall be deemed to preclude or restrict the consolidation pursuant to a Series Resolution of any Bonds of any two or more separate Series authorized pursuant hereto and to any such Series Resolution to be issued pursuant to any of the provisions of **Sections 3.04 and 3.06** into a single Series of Bonds for purposes of sale and issuance; *provided* that each of the conditions and other requirements contained in **Sections 3.03, 3.04 and 3.06** as applicable to each such separate Series shall be met and complied with. Except as otherwise provided in this Section or in such Series Resolution, such a consolidated Series shall be treated as a single Series of Bonds for all purposes hereof.

Section 3.02. *Pledge of Revenues, Funds and Other Moneys.* (A) The Bonds are limited special obligations of the City and County payable solely from and secured by the funds pledged therefor. Subject to subsection (B) of this section, there are hereby pledged as security for the payment of the principal and Redemption Price (if any) of, and interest on, the Bonds in accordance with their terms and the provisions of the Resolution, subject only to the provisions of the Resolution permitting the application thereof for the purposes and on the terms and conditions set forth in the Resolution: (i) the proceeds of sale of the Bonds pending application thereof in accordance with the provisions hereof or of a Series Resolution or a Series Certificate, (ii) the Net Revenues, and (iii) the Subordinate Obligation Account but excluding all Subaccounts therein unless specifically pledged by this Resolution, a Series Resolution or a Series Certificate, (iv) the Debt Service Subaccount, (v) with respect to any Series of Bonds entitled to the benefit of a Separate Series Reserve Subaccount, such Separate Series Reserve Subaccount, and (vi) with respect to any Series of Bonds entitled to the benefit of the Common Reserve Subaccount, the Common Reserve Subaccount, including the investments, if any, in



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such Account and Subaccounts; and the Bondholders shall have to the extent permitted by law, a lien on, and a security interest in, such proceeds, Net Revenues, and Subaccounts for such purpose and subject to such provisions of the Resolution. The Rebate Subaccount and the Third Lien Subaccount are not pledged to the payment of the principal and Redemption Price (if any) of, and interest on, the Bonds.

(B) So long as First Resolution Obligations are outstanding for purposes of the First Bond Resolution, the pledge of the Net Revenues made by this Resolution is, and is hereby expressly declared to be, (i) subordinate and junior in all respects to the pledge of the Net Revenues made by the First Bond Resolution; and (ii) prior and superior to the pledge which may be made by any resolution, indenture or other instrument authorizing and securing Third Lien Obligations and Reimbursable Obligations. On and after such date, if any, that First Resolution Obligations are no longer outstanding for purposes of the First Bond Resolution, the pledge of the Net Revenues made by this Resolution shall be prior and superior in all respects to any pledge of the Net Revenues made by any resolution, indenture or other instruments, including the pledge which may be made by any resolution, indenture or other instrument authorizing and securing Third Lien Obligations and Reimbursable Obligations. There shall be additionally pledged on and after such date as security for the payment of the principal and Redemption Price (if any) of, and interest on, the Bonds in accordance with their terms and the provisions of this Resolution, subject only to the provisions of this Resolution permitting the application thereof for the purposes and on the terms and conditions set forth in this Resolution, (i) the Sewer Fund but excluding all Accounts and Subaccounts therein unless specifically pledged by this Resolution, a Series Resolution or a Series Certificate, (ii) the Renewal and Replacement Account, (iii) the Rate Stabilization Account and (iv) the Wastewater General Account.

(C) The pledge of, and lien on, and security interest in, the proceeds of the Bonds and the Net Revenues as received by the Department and the aforesaid Fund, Accounts and Subaccounts shall be valid and irrevocable: (i) from and after the time that, if required by State law, a financing statement is filed with respect to such pledge, lien and security interest as required by State law, and, upon such filing; or (ii), if no financing statement is so required by State law, upon delivery of the proceeds of a Series of Bonds, and all the Net Revenues as received by the Department and the aforesaid Fund, Accounts and Subaccounts shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of the pledge shall be valid as against, and prior to the lien of, all parties having claims of any kind in tort, contract or otherwise against the City and County irrespective of whether such parties have notice thereof.

(D) The Bonds issued hereunder shall be equally and ratably payable and secured hereunder without priority by reason of date of adoption of the Series Resolution authorizing a Series of Bonds or the related Series Certificate or by reason of their Series, number or date, date of issue, execution, authentication or sale thereof, or otherwise; *provided, however*, that nothing



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herein shall prevent the City and County from affording any particular Series of Bonds or particular Bonds additional or different security through a Support Facility, escrow funds, the exclusion from the benefit of the Common Reserve Subaccount, a Separate Series Reserve Subaccount or funds, accounts and subaccounts with respect to a particular Series of Bonds funded from sources other than Net Revenues. Bonds which are not a part of a Series for which an escrow fund, Separate Series Reserve Subaccount or other funds and accounts has been created to provide additional or different security shall not be entitled to the benefits of such escrow fund, Separate Series Reserve Subaccount or other funds and accounts except to the extent specifically provided in the Series Resolution authorizing such Series or the related Series Certificate.

(E) The principal and Redemption Price (if any) of, and interest on, the Bonds shall not be payable from any funds of the City and County other than the Debt Service Subaccount nor shall the Bonds constitute a general obligation of the City and County, or create a charge upon any other revenues or property of the City and County, except the Net Revenues and other moneys and securities pledged under the Resolution. The Bonds are not a general or moral obligation of the State of Hawaii or any political subdivision thereof, including the City and County, and the faith and credit of the State or any political subdivision thereof, including the City and County, are not pledged to the payment of the principal and Redemption Price (if any) of, or interest on, the Bonds, and no Holder of the Bonds shall have the right to compel the exercise of the taxing power of the State or any political subdivision thereof, including the City and County, in connection with any default with respect to the Bonds. Each Bond shall recite in substance the provisions of this subsection (E).

(F) No Holder of a Bond shall be required to see that the moneys derived from such Bonds are applied to the purpose or purposes for which such Bond is issued. The validity of the Bonds shall neither be dependent upon nor affected by the validity or regularity of any proceedings relating to the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of the Wastewater System nor the use and application of the proceeds of the Bonds. The Bonds shall contain a recital that they are issued pursuant to the Act, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

Section 3.03. Series Resolutions. Each Series Resolution authorizing the issuance of a Series of Bonds shall specify, or delegate to any Authorized Officer the power to determine in a Series Certificate, the following:



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(a) The sale of the Bonds of such Series at public or private sale; approval of the terms of and publication of an official statement or other offering document describing the Bonds of such Series and, if such Bonds are to be sold at public sale, publication of a notice of sale; and execution of a contract or contracts of purchase at public or private sale on behalf of the City and County;

(b) The authorized principal amount of such Series of Bonds and an appropriate Series designation, in addition to the title "Wastewater System Revenue Bonds";

(c) The purpose or purposes for which such Series of Bonds is being issued and if any such purpose be payment of the Cost of an Improvement, the description, in general terms, of such Improvement and the then estimated Cost;

(d) The date or dates, maturity date or dates and principal amount of each maturity of the Bonds of such Series or the method for calculating such dates and amounts, the amount and date of each Sinking Fund Installment, if any, or the method for calculating the Sinking Fund Installments and which Bonds of such Series are Serial Bonds or Term Bonds, if any, and the Record Date or Record Dates of the Bonds of such Series for which the Record Date or Record Dates is other than the fifteenth (15th) day (whether or not a Business Day) next preceding an interest payment date for such Bonds or the forty-fifth (45th) day (whether or not a Business Day) preceding a redemption date;

(e) The interest rate or rates, if any, of the Bonds of such Series or the manner of determining such rate or rates, the date from which interest on the Bonds of such Series shall accrue, the dates on which interest on the Bonds of such Series shall be payable, if any, and if any Bonds of such Series are Variable Rate Bonds, the Maximum Interest Rate and the Minimum Interest Rate for such Bonds, and the provisions, if any, as to the calculation or change of variable interest rates;

(f) If Bonds of such Series are Capital Appreciation Bonds, the Valuation Dates for such Bonds and the Accreted Value on each such Valuation Date;

(g) If Bonds of such Series are Deferred Income Bonds, the Interest Commencement Date for such Bonds, the Valuation Dates prior to the Interest Commencement Date for such Bonds and the Appreciated Value on each such Valuation Date;

(h) If Bonds of such Series are Capital Appreciation Bonds or Deferred Income Bonds, the manner in which and the period during which principal and interest shall be deemed to accrue on such Bonds;



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(i) If Bonds of such Series are Option Bonds, provisions regarding tender for purchase or redemption thereof and payment of the purchase or Redemption Price thereof; provisions regarding the appointment of a Remarketing Agent, and (i) the terms upon and the procedures with which such Remarketing Agent shall purchase and remarket Bonds tendered by the holders thereof pursuant to valid notices of tender as specified in the Series Resolution or the Series Certificate applicable thereto at the purchase price of such Bonds; and (ii) the procedures and standards pursuant to which the Remarketing Agent shall determine, among other things specified in the Series Resolution and the Series Certificate applicable thereto, the period during which a particular rate of interest determined for a Series of Bonds is to remain in effect pursuant to a Series Resolution or Series Certificate, the interest rate of the Bonds and matters relating thereto;

(j) The denomination or denominations of and the manner of numbering and lettering the Bonds of such Series;

(k) Whether any of the Bonds of such Series shall be Book Entry Bonds and the Depository therefor;

(l) The Paying Agent or Paying Agents for such Series of Bonds and, the place or places of payment of the principal, Sinking Fund Installments, if any, Redemption Price of and interest on the Bonds of such Series;

(m) The Redemption Price or Redemption Prices, if any, and, subject to **Article V** hereof, the redemption terms, if any, for the Bonds of such Series;

(n) The provisions for the sale or exchange of the Bonds of such Series and for the delivery thereof;

(o) The form of the Bonds of such Series and the form of the Paying Agent's certificate of authentication thereon;

(p) Whether the Bonds of such Series shall be entitled to the benefit of the Common Reserve Subaccount, and if so entitled the amount of the Common Reserve Subaccount Requirement and the method of funding or providing for such Common Reserve Subaccount Requirement, and any provisions with respect to subaccounts therein, if applicable, and the Revenues and application thereof, as provided in **Article VI** hereof;

(q) If the Bonds of such Series shall not be entitled to the benefits of the Common Reserve Subaccount, whether a Separate Series Reserve Subaccount shall be established for the Bonds of such Series, and if so determined to be established, the



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amount of the Separate Series Reserve Subaccount Requirement and the method of funding or providing for such Separate Series Reserve Subaccount Requirement, the terms and provisions and credit quality of any Support Facility to be deposited therein, and any provisions with respect to subaccounts therein, if applicable, and the Revenues and application thereof, as provided in **Article VI** hereof;

(r) Directions for the application of the proceeds of the Bonds of such Series, including the interest on such Bonds to be capitalized from the proceeds thereof, if any, and the date or dates to which such capitalized interest shall accrue;

(s) Whether a Support Facility is to be obtained or an Interest Rate Exchange Agreement is to be entered into in connection with the issuance of such Series; *provided, however*, that, if any Bonds of such Series are Option Bonds, (i) the appointment of a Support Facility Provider which shall supply a Support Facility with respect to such Series of Bonds; (ii) provisions for the establishment of separate accounts in which amounts drawn under a Support Facility for the Series of Bonds being authorized are to be deposited; and (iii) provisions for maintenance, replacement and notices to Bondholders, Rating Agencies and other persons;

(t) Whether the Bonds of such Series shall be Tax-exempt Bonds; and

(u) Any other provisions deemed advisable by the City Council or Authorized Officer that is not in conflict with the provisions hereof.

The Authorized Officer to whom a Series Resolution has delegated the power to determine any of the foregoing shall execute a Series Certificate evidencing such determinations or other actions taken pursuant to such delegation, and such Series Certificate shall be conclusive evidence of the determinations or actions of the Authorized Officer as to the matters stated therein.

Section 3.04. Conditions for the Issuance of Bonds Other Than Refunding Bonds Hereunder. (A) One or more Series of Bonds, exclusive of Refunding Bonds issued pursuant to **Section 3.06**, may be issued hereunder at any time and from time to time for any lawful use or purpose relating to the Wastewater System, including, without limitation, payment of all or a portion of the Costs of Improvement, but only upon compliance as to each such Series with the provisions of **Section 3.03** and delivery to the Director of Budget and Fiscal Services of the following documents or moneys or securities, all of which documents shall be dated or certified, as the case may be, as of the date of such delivery to the Director of Budget and Fiscal Services:

(1) A certified copy of the Series Resolution authorizing the issuance of the Bonds of such Series.



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(2) A certified copy of the Series Certificate, if any, executed in connection with such Bonds.

(3) A Written Request of the City and County as to the delivery of such Bonds, describing the Bonds to be delivered, designating the purchaser or purchasers to whom such Bonds are to be delivered, and stating the consideration for such Bonds.

(4) A Written Certificate of the City and County stating the amount required to be in the Common Reserve Subaccount after issuance of the Bonds then to be issued, and that after deposit in the Common Reserve Subaccount of the amount, if any, to be deposited therein in connection with the issuance of such Bonds, the amounts on deposit in the Common Reserve Subaccount will not be less than the Common Reserve Subaccount Requirement.

(5) A Written Certificate of the City and County stating the amount required to be in the Separate Series Reserve Subaccount created, if any, to provide additional security for the Bonds of such Series after issuance of the Bonds then to be issued, and that after deposit in such Separate Series Reserve Subaccount of the amount to be deposited therein in connection with the issuance of such Bonds, the amounts on deposit in such Separate Series Reserve Subaccount will not be less than the Separate Series Reserve Subaccount Requirement for such Separate Series Reserve Subaccount.

(6) Except in the case of Refunding Bonds, a Written Certificate of the City and County stating that the City and County is not, and, as a result of the issuance of such Bonds, shall not be, in default in the performance of any of the covenants, conditions, agreements or provisions contained herein.

(7) If any Bonds of such Series are Option Bonds, a Support Facility in such an amount as would provide sufficient moneys for the purchase or redemption of all Option Bonds of such Series if the Holders thereof elected to tender for purchase or redemption the entire aggregate Outstanding principal amount of the Option Bonds of such Series.

(8) Unless the Director of Budget and Fiscal Services is a party thereto, a copy of the agreement, if any, between the City and County and the Depository for such Bonds.

(9) An opinion of Bond Counsel to the effect that: (a) the Resolution, including the applicable Series Resolution authorizing the Series of Bonds, has been duly and lawfully adopted by the City Council and is a valid and legally binding instrument of the City and County, enforceable in accordance with the terms thereof; (b) the Resolution creates a valid pledge and lien which it purports to create of the Net Revenues, moneys,



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securities and funds held or set aside under the Resolution, subject to the application thereof to the purposes and on the terms and conditions permitted by the Resolution; and (c) the Bonds of such Series are valid and legally binding limited special obligations of the City and County, enforceable in accordance with the terms thereof, are entitled to the benefits of the Resolution and the Act, have been duly and validly authorized, issued and authenticated in accordance with law and the Resolution, and do not violate the provisions of the Resolution.

(10) Either (I) a Written Certificate of the City and County based: (i) on audited figures or (ii) to the extent audited figures are not available, on figures taken by an independent certified public accountant from the Department's books and records, showing that the Net Revenues for: (a) the most recent Fiscal Year, or (b) any consecutive twelve (12) months' period out of twenty-four (24) months immediately preceding the month in which such Bonds are issued were not less than the greater of: (x) the sum of (1) the maximum of the sum of the Aggregate Debt Service (as defined in the First Bond Resolution) on all First Resolution Obligations issued and outstanding under and pursuant to the First Bond Resolution and the Aggregate Debt Service on all Bonds then Outstanding and on the proposed Series of Bonds in any Fiscal Year and the twelve (12) month period selected and (2) the Required Deposits for such Fiscal Year or the twelve (12) month period selected; and (y) the sum of (1) 1.10 times the maximum of the sum of the Aggregate Debt Service (as defined in the First Bond Resolution) on all First Resolution Obligations issued and outstanding under and pursuant to the First Bond Resolution and the Aggregate Debt Service on all Bonds then Outstanding and on the proposed Series of Bonds in any Fiscal Year and the twelve (12) month period selected, and (2) 1.00 times the aggregate Support Facility Reimbursement Obligations outstanding under the First Bond Resolution and this Resolution as of the date of the Written Certificate of the City and County, or (II) a Written Certificate of the City and County or Certificate of the Consulting Engineer that the Net Revenues to be derived in each of the five (5) Fiscal Years following the earlier of: (i) the end of the period during which interest is capitalized or, if no interest is to be capitalized, the Fiscal Year in which the proposed Series of Bonds are issued, and (ii) the date on which substantially all Improvements to be financed with the proceeds of the proposed Series of Bonds are expected to commence operations, or, if the proceeds of such Series of Bonds will not be used to fund the Costs of Improvements, the Fiscal Year in which the proposed Series of Bonds are issued, are estimated to be not less than the greater of: (x) the sum of (1) the maximum of the sum of the Aggregate Debt Service (as defined in the First Bond Resolution) on all First Resolution Obligations issued under and pursuant to the First Bond Resolution and the Aggregate Debt Service on all Bonds then Outstanding and on the proposed Series of Bonds in any such Fiscal Year, and (2) the Required Deposits for any such Fiscal Year; and (y) the sum of (1) 1.10 times the maximum of the sum of the Aggregate Debt Service (as defined in the First Bond Resolution) on all First Resolution Obligations issued under and pursuant to the First Bond Resolution and the Aggregate



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Debt Service on all Bonds then Outstanding and on the proposed Series of Bonds in any such Fiscal Year, and (2) 1.00 times the aggregate Support Facility Reimbursement Obligations outstanding under the First Bond Resolution and this Resolution as of the date of such Written Certificate of the City and County or certificate of the Consulting Engineer, as the case may be (the "Additional Bonds Requirement").

(11) Such further documents, moneys and securities as are required by the provisions of any Series Resolution or Series Certificate.

(12) The provisions of paragraphs (6) and (10) of subsection (A) of this **Section 3.04** shall not apply to the initial Series of Bonds issued pursuant to the Resolution, unless or except as is otherwise set forth in the Series Resolution authorizing the issuance thereof.

(B) In determining Debt Service on Variable Rate Bonds then Outstanding and Variable Rate Bonds then proposed to be issued for purposes of the Additional Bonds Requirement, the interest rate shall be calculated as: (i) if any Variable Rate Bonds are then Outstanding and have been Outstanding for at least twenty-four (24) months, the highest average interest rate borne by such Variable Rate Bonds for any 30-day period, or (ii) if no such Variable Rate Bonds are then Outstanding, the Revenue Bond Index at the time of calculation.

(C) For purposes of the Additional Bonds Requirement, Bond Anticipation Notes then Outstanding shall be treated as Bonds. In determining Debt Service on such Bond Anticipation Notes, such Bond Anticipation Notes are assumed to mature in thirty (30) years resulting in level annual debt service and bear interest equal to the Revenue Bond Index at the time of calculation.

(D) For purposes of the Additional Bonds Requirement, Third Lien Obligations and Reimbursable Obligations originally issued as Bond Anticipation Notes with a maturity of five (5) years or less are assumed to mature in thirty (30) years resulting in level annual debt service and bear interest equal to the Revenue Bond Index at the time of calculation.

Section 3.05. *Written Certificate of the City and County; Certificate of the Consulting Engineer.* In preparing the certificates required by the Additional Bonds Requirement described in **clause (10) of subsection (A) of Section 3.04**, the Authorized Officer or the Consulting Engineer, as applicable, may make the adjustments to the Net Revenues set forth below.

(A) If any changes have been made in the schedule of rates and charges imposed by the City and County for commodities and services furnished by the Wastewater System which are in effect at the time of adoption of the Series Resolution authorizing the issuance of the Bonds then being issued and were placed into effect subsequent to the start of the Fiscal Year or the twelve (12) month period selected



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pursuant to **clause (10)(I) of subsection (A) of Section 3.04**, the Authorized Officer may, if such changes result in increases in such rates and charges, and shall, if such changes result in reductions in such rates and charges, adjust the Net Revenues for such period to reflect any change in such Net Revenues which would have occurred if the schedule of rates and charges in effect at the time of the adoption of the Series Resolution authorizing the issuance of such Bonds had been in effect during the portion of such period in which such schedule was not in effect.

(B) If customers are being served by the Department at the time of adoption of the Series Resolution authorizing the issuance of the Bonds then being issued and who were added to the Wastewater System subsequent to the start of the Fiscal Year or the twelve (12) month period selected pursuant to **clause (10)(I) of subsection (A) of Section 3.04**, the Authorized Officer may adjust the Net Revenues for such period to reflect any change in such Net Revenues which would have occurred if the additional customers had been served during the portion of the period in which such customers were not served.

(C) If residential, commercial, industrial or institutional customers which are in existence are not then served by the Wastewater System at the time of adoption of the Series Resolution authorizing the issuance of the Bonds then being issued, but are then expected to be served following completion of the Improvements during the five (5) Fiscal Years covered by such certificate, the Authorized Officer or Consulting Engineer, as applicable, shall estimate the effect which such new customers would have had on the Net Revenues for the period selected pursuant to **clause (10) of subsection (A) of Section 3.04** if such new customers had been served during the entire period and shall adjust the Net Revenues for such period to give effect to such new customers. Any such estimate shall be based upon the operating experience and records of the Department with respect to the Wastewater System and upon any available financial and quarterly statistics deemed pertinent by the Authorized Officer or the Consulting Engineer, as applicable.

(D) If any long-term, guaranteed contracts with customers of the Wastewater System are in effect at the time of adoption of the Series Resolution authorizing the issuance of the Bonds then being issued and which were entered into subsequent to the start of the Fiscal Year or twelve (12) month period selected pursuant to **clause (10)(I) of subsection (A) of Section 3.04**, the Authorized Officer may adjust the Net Revenues for such period to reflect any change in such Net Revenues which would have occurred if such contracts had been in effect for the entire period.

(E) In rendering the certificate required pursuant to **clause (10)(II) of subsection (A) of Section 3.04**, the Authorized Officer or Consulting Engineer, as applicable, shall deem the Operation and Maintenance Expenses for the Wastewater System for the first Fiscal Year of the five (5) year period to be equal to such Operation



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and Maintenance Expenses for the Fiscal Year immediately preceding the Fiscal Year in which the proposed Series of Bonds is to be delivered, and thereafter the Authorized Officer or Consulting Engineer, as applicable, shall adjust, if deemed necessary, for any increased Operation and Maintenance Expenses which are estimated to occur during any subsequent Fiscal Year during the five (5) year period and are, in the judgement of the Authorized Officer or Consulting Engineer, as applicable, essential to maintaining and operating the Wastewater System.

(F) In rendering any certificate required pursuant to **Section 3.04**, the Authorized Officer or Consulting Engineer, as applicable, may rely upon estimates from other sources which such Authorized Officer or Consulting Engineer considers reliable, making such adjustments and provisions for contingencies based on similar projects and other considerations as deemed appropriate by such Authorized Officer or Consulting Engineer.

Section 3.06. Refunding Bonds. (A) The City and County by means of a Series Resolution adopted in compliance with the provisions of **Section 3.03** may issue hereunder a Series of Refunding Bonds at any time for the purpose of refunding (including by purchase) at any time all or any portion of Bonds Outstanding, including amounts to pay principal, redemption premium and interest to the date of maturity or redemption (or purchase) and the expense of issuing the Refunding Bonds and of effecting such refunding; *provided, however*, that the provisions of **subsection (A) of Section 3.04** shall be complied with upon the issuance of such Series; *provided, further, however*, that **clause (10) of subsection (A) of Section 3.04** need not be complied with if the maximum annual Debt Service in any Fiscal Year on the Refunding Bonds proposed to be issued does not exceed maximum annual Debt Service in any Fiscal Year on the refunded Bonds by more than ten percent (10%).

(B) The City and County by means of a Series Resolution adopted in compliance with the provisions of **Section 3.03** may issue hereunder a Series of Refunding Bonds at any time for the purpose of refunding (including by purchase) at any time all or any portion of outstanding Third Lien Obligations or Reimbursable Obligations, including amounts to pay principal, redemption premium and interest to the date of maturity or redemption (or purchase) and the expense of issuing the Refunding Bonds and of effecting such refunding; *provided, however*, that the provisions of **subsection (A) of Section 3.04** shall be complied with upon the issuance of such Series.

(C) The proceeds of the Refunding Bonds of each Series issued pursuant to this **Section 3.06** shall be applied for the purposes of making deposits in such Funds, Accounts and Subaccounts under the Resolution and shall be applied to the refunding purposes thereof as shall be provided by the Series Resolution authorizing such Refunding Bonds or the Series Certificate relating to such Bonds.



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Section 3.07. Bond Anticipation Notes. Bond anticipation notes ("Bond Anticipation Notes") may be issued by the City and County at such time as the City and County shall have by a Series Resolution duly adopted authorized the issuance of Bonds hereunder. No Bond Anticipation Notes shall be issued unless there shall be filed with the Director of Budget and Fiscal Services on or prior to the date of issuance of such Bond Anticipation Notes, a Written Certificate of the City and County to the effect that, based on market conditions expected to be prevailing at the time of issuance of the Series of Bonds in anticipation of which such Bond Anticipation Notes are issued and on other reasonable assumptions set forth in such Written Certificate, the provisions of **subsection (A) of Section 3.04** are expected to be complied with at the time of issuance of such Series of Bonds. The Bond Anticipation Notes may be printed, lithographed or typewritten, shall be of such denomination as may be determined by an Authorized Officer, and shall bear such legends as may be deemed necessary by such Authorized Officer. The maximum maturity of such Bond Anticipation Notes, including the renewals thereof, shall not exceed five years from the date of the original Bond Anticipation Note. Each Bond Anticipation Note shall be executed in the manner prescribed for the definitive Bonds. The principal of such Bond Anticipation Notes may be paid from the proceeds of such Bond Anticipation Notes (or any renewal thereof) or from the proceeds of the Bonds in anticipation of which such Bond Anticipation Notes were issued. The interest on such Bond Anticipation Notes may be secured by a lien on and pledge of, and be paid from, the Net Revenues on a parity with the lien on and pledge of the Net Revenues herein created for the payment and security of the Bonds. The principal of such Bond Anticipation Notes shall be secured by a lien on and pledge of the proceeds of the Bonds in anticipation of which such Bond Anticipation Notes were issued and any such pledge shall have priority over any other pledge of such proceeds created by the Resolution. Bond Anticipation Notes issued under this **Section 3.07** shall be treated as Bonds for all purposes of the Resolution (including the requirements of **Sections 3.04 and 3.06**) and shall be payable from the Debt Service Subaccount, except to the extent that the principal of any such Bond Anticipation Note is paid from the proceeds of other Bond Anticipation Note or from the proceeds of Bonds.

Section 3.08. Third Lien Obligations. (A) The City and County may at any time or from time to time, issue evidences of indebtedness payable out of, and which may be secured by a pledge of, such amounts in the Third Lien Obligation Subaccount as may from time to time be available for the purpose of payment thereof. The City and County may, by resolution, provide for various priorities in the liens and pledges securing Third Lien Obligations, and nothing in the Resolution shall be construed so as to require that the payment of, or pledges securing, Third Lien Obligations be on a parity *inter se*.

(B) The City and County may also, at any time or from time to time, issue Third Lien Obligations: (i) to refund any Third Lien Obligations issued as provided in this **Section 3.08**; (ii) to refund Outstanding Bonds of one or more Series or one or more maturities within a Series; or



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(iii) to refund any Reimbursable Obligations. Such Third Lien Obligations issued for refunding purposes may be payable out of, and may be secured by a pledge of, such amounts in the Third Lien Obligations Fund or the Wastewater General Account as may from time to time be available therefor.

(C) The resolution, indenture or other instrument securing or evidencing each issue of Third Lien Obligations shall contain provisions (which shall be binding on all holders of such Third Lien Obligations) not more favorable to the holders of such Third Lien Obligations than the following:

(1) In the event of any insolvency or bankruptcy proceedings, and any receivership, liquidation, reorganization or other similar proceedings in connection therewith, relative to the City and County or the Department, or to the property of the City and County or the Department, and in the event of any proceedings for voluntary liquidation, dissolution or other winding up of the City and County or the Department, the Holders of all Bonds then Outstanding shall be entitled to receive payment in full of all principal and interest on all such Bonds before the holders of the Third Lien Obligations are entitled to receive any payment from the trust estate under the Resolution consisting of the Net Revenues and Funds held under the Resolution (hereinafter in this subsection referred to as the "Trust Estate") on account of principal (and premium, if any) or interest on the Third Lien Obligations.

(2) In the event that any issue of Third Lien Obligations is declared due and payable before its expressed maturity because of the occurrence of an event of default (under circumstances when the provisions of (1) above shall not be applicable), the Holders of all Bonds Outstanding at the time such Third Lien Obligations so become due and payable because of such occurrence of such an event of default shall be entitled to receive payment in full of all principal and interest on all such Bonds before the holders of the Third Lien Obligations are entitled to receive any accelerated payment from the Trust Estate of principal (and premium, if any) or interest on the Third Lien Obligations.

(3) If any Event of Default with respect to the Bonds shall have occurred and be continuing (under circumstances when the provisions of (1) above shall not be applicable), the Holders of all Bonds then Outstanding shall be entitled to receive payment in full of all principal and interest on all such Bonds before the holders of the Third Lien Obligations are entitled to receive any accelerated payment from the Trust Estate of principal (and premium, if any) or interest on the Third Lien Obligations.

(4) No Bondholder shall be prejudiced in his right to enforce subordination of the Third Lien Obligations by any act or failure to act on the part of the City and County.



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(5) The Third Lien Obligations may provide that the provisions of (1), (2), (3) and (4) above are solely for the purpose of defining the relative rights of the Bondholders on the one hand, and the holders of Third Lien Obligations on the other hand, and nothing therein shall impair, as between the City and County and the owners of the Third Lien Obligations, the obligation of the City and County to pay to the owners thereof the principal thereof and premium, if any, and interest thereon in accordance with its terms, nor shall anything therein prevent the holders of the Third Lien Obligations from exercising all remedies otherwise permitted by applicable law or thereunder upon default thereunder, subject to the rights under (1), (2), (3) and (4) above of the Holders of Bonds to receive cash, property or securities otherwise payable or deliverable to the holders of the Third Lien Obligations; and the Third Lien Obligations may provide that, insofar as a trustee or paying agent for such Third Lien Obligations is concerned, the foregoing provisions shall not prevent the application by such trustee or paying agent of any moneys deposited with such trustee or paying agent for the purpose of the payment of or on account of the principal (and premium, if any) and interest on such Third Lien Obligations if such trustee or paying agent did not have knowledge at the time of such application that such payment was prohibited by the foregoing provisions.

(D) Any issue of Third Lien Obligations may have such rank or priority with respect to any other issue of Third Lien Obligations as may be provided in the resolution, indenture or other instrument securing such issue of Third Lien Obligations and may contain such other provisions as are not in conflict with the provisions of the Resolution.

Section 3.09. *Separate Utility Systems.* Nothing contained in the Resolution shall prevent the City and County from authorizing and issuing bonds, notes, warrants, certificates or other obligations or evidences of indebtedness, other than Bonds, to acquire or construct facilities for the collection, treatment or disposal of sewage or wastewater, and any incidental properties to be constructed or acquired in connection therewith, which facilities shall be a separate utility system and which bonds or other obligations or evidences of indebtedness shall be payable solely from the revenues or other income derived from the ownership or operation of such separate system; *provided, however*, that the City and County will not issue bonds, notes, warrants, certificates or other obligations or evidences of indebtedness for the purpose of acquiring or constructing such a separate utility system unless and until a report of the Consulting Engineer shall be delivered to the Director of Budget and Fiscal Services to the effect that: (i) the plan for developing the separate utility system is consistent with sound planning, and the separate utility system is of such character that it would be useful to the City and County; (ii) the separate utility system can be economically and effectively utilized by the City and County; (iii) the cost of the services of the separate utility system is reasonable in comparison to alternative sources; and (iv) in the opinion of the Consulting Engineer, the acquisition, construction or operation of such separate utility system will not result in a reduction of the Revenues below the amounts covenanted by **Section 8.02** to be maintained.



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Section 3.10. *Special Provisions for Certain Bonds.* (A) The principal of Capital Appreciation Bonds shall be deemed to be the Accreted Value thereof for the provisions of the Resolution relating to redemption, acceleration and actions by Bondholders.

(B) The principal of Deferred Interest Bonds shall be deemed to be the Appreciated Value thereof for all purposes of the Resolution, including, without limiting the generality of the foregoing, for purposes of determining the Common Reserve Subaccount Requirement as defined in **Section 1.01** and the provisions relating to redemption, acceleration and actions by Bondholders.

(C) A repurchase or redemption of any Option Bond pursuant to the provisions of a Series Resolution or a Series Certificate shall not cause any such Bond so repurchased or redeemed to lose the benefit of any security hereunder or to be no longer deemed to be Outstanding pursuant to **Article XII**. The repurchase or redemption price shall be financed by the proceeds of resale of the repurchased Bonds, by the issuance of Refunding Bonds in accordance with this Article, by using moneys available therefor in the Debt Service Subaccount in accordance with **Section 6.03**, or by any other lawful means, or by a combination of the foregoing. To the extent permitted by law and the Series Resolution or the Series Certificate, an Authorized Officer, or an agent appointed for such purpose by an Authorized Officer, pursuant to authority delegated by the City and County may resell the repurchased Bonds and the City and County may issue Bonds (which shall be treated under the Resolution as Refunding Bonds) for the purpose of financing any loss incurred by the repurchase and resale. The repurchase or redemption price shall not be treated as Debt Service for the purpose of calculating payments into the Debt Service Subaccount pursuant to **Section 6.03**. If Bonds of a Series are made subject to repurchase or redemption pursuant to this section, Debt Service shall be calculated hereunder by using the schedule of Debt Service which would apply if the option were not exercised except to the extent the option has been exercised and the option price has been paid (or provision for payment has been made pursuant to **Section 12.01**). Nothing in this paragraph shall be deemed to preclude any repurchase or redemption of Bonds otherwise required or permitted by the terms of the Resolution.

(D) For purposes of calculating the payments into the Debt Service Subaccount pursuant to **Section 6.03** with respect to Variable Rate Bonds, the interest accrued or estimated by an Authorized Officer to accrue during the calendar month in which the payment is to be made shall be the amount of the required payment, subject in the case of an estimate to an adjustment at the end of the month.

Section 3.11. *Support Facilities and Interest Rate Exchange Agreements.* (A) In connection with the issuance of any Series of Bonds and to the extent permitted by law, the City and County may obtain or cause to be obtained from one or more Support Facility Providers one



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or more Support Facilities providing for payment of all or a portion of the purchase price or principal, premium, if any, or interest due or to become due on specified Bonds of such Series, or providing for the purchase of such Bonds or a portion thereof by such Support Facility Providers, or providing, in whole or in part, for the funding of the Common Reserve Subaccount or a Separate Series Reserve Subaccount pursuant to **Sections 3.04, 3.06 and 6.03**. In connection with the issuance of any Series of Bonds or to better manage its assets and liabilities and, to the extent permitted by law, the City and County may enter into with one or more Counterparties one or more Interest Rate Exchange Agreements; *provided* that no such Interest Rate Exchange Agreement shall adversely affect the exclusion from gross income for purposes of federal income taxation of interest on the Tax-exempt Bonds of any Series.

(B) In connection therewith, the City and County may enter into agreements with one or more Support Facility Providers or Counterparties to provide for, among other things: (i) the payment of fees and expenses to such Support Facility Providers or Counterparties; (ii) the terms and conditions of such Support Facility or Interest Rate Exchange Agreement and the Series of Bonds affected thereby; and (iii) the security, if any, to be provided to such Support Facility Providers or Counterparties. The City and County may secure the Support Facility or Interest Rate Exchange Agreement by an agreement providing for the purchase of the Bonds secured thereby with such adjustments to the rate of interest, method of determining interest, maturity, or redemption provisions as specified in the Series Resolution or the Series Certificate. Debt Service with respect to any Bonds so secured shall be calculated for purposes of the definition of Common Reserve Subaccount Requirement by using the Assumed Long-Term Fixed Rate.

(C) The City and County may also agree in any agreement with the Support Facility Provider of such Support Facility or the Counterparty under an Interest Rate Exchange Agreement to reimburse directly such Support Facility Provider or Counterparty for any amounts paid under the terms of such Support Facility or Interest Rate Exchange Agreement, together with interest thereon (the "Support Facility Reimbursement Obligation"); *provided, however*, that no Support Facility Reimbursement Obligation shall be created, for purposes of the Resolution, until amounts are paid under such Support Facility or Interest Rate Exchange Agreement, as the case may be. Any such Support Facility Reimbursement Obligation may be secured by a lien on and pledge of the Net Revenues on a parity with the lien on and pledge of the Net Revenues created by **Section 3.01** with respect to the Bonds (a "Parity Support Facility Reimbursement Obligation"). Any such Parity Support Facility Reimbursement Obligation shall be deemed to be a part of the Series of Bonds to which the Support Facility which gave rise to such Parity Support Facility Reimbursement Obligation relates. Payment of Support Facility Reimbursement Obligation may be made out of the Sewer Funds as provided in **subsection (D) of Section 6.02**.

(D) Any Support Facility deposited in the Common Reserve Subaccount or the long-term debt of the Support Facility Provider of such Support Facility shall, in each case, be in the highest rating category by each Rating Agency, and if rated by A.M. Best & Company, also be rated in the highest rating category by A.M. Best & Company or its successors. In the event any

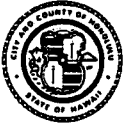


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Support Facility deposited in the Common Reserve Subaccount or the long-term debt of the issuer of any Support Facility deposited in the Common Reserve Subaccount shall fall below the highest rating category of each Rating Agency, and A.M. Best & Company, if rated by A.M. Best & Company, the City and County shall, within one hundred twenty (120) days, obtain a new Support Facility which is rated in the highest rating category of each Rating Agency or the long-term debt of the issuer of such new Support Facility is rated in the highest rating category of each Rating Agency and A.M. Best & Company; *provided, however*, that if the new Support Facility is not obtained within one hundred twenty (120) days, the City and County shall deposit in the Common Reserve Subaccount Net Revenues in the amount provided in **Section 6.03**. If a disbursement is made pursuant to a Support Facility deposited in the Common Reserve Subaccount, the City and County shall: first, reinstate the full amount of such Support Facility; and second, if necessary deposit Net Revenues in the Common Reserve Subaccount in the amount of the disbursement made under such Support Facility, in either case such that the amount in the Common Reserve Subaccount shall equal the Common Reserve Subaccount Requirement within a period of time not longer than would be required to restore the Common Reserve Subaccount by application of moneys in the Sewer Fund. The City and County may at any time deposit cash or Investment Securities as replacement for one or more Support Facilities.

(E) The City and County shall obtain and maintain in effect one or more Support Facilities for Option Bonds. The City and County shall obtain a replacement Support Facility to replace any Support Facility for Option Bonds that is expiring, not renewed or terminated. Procedures for such replacement, maintenance and notices to Bondholders, rating agencies or other persons shall be provided in the Series Resolution authorizing the Series of Bonds or the Series Certificate relating to such Bonds.

Section 3.12. Reimbursable Obligations. The obligation for the payment of Reimbursable Obligations shall be: (i) after and inferior to the lien and security interest for the payment of Bonds and those Third Lien Obligations which are payable from the Third Lien Obligation Subaccount; and (ii) prior and superior to the lien and security interest for the payment of those Third Lien Obligations which are payable from the Wastewater General Account. Reimbursable Obligations shall be payable from the Reimbursable Obligation Account.



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ARTICLE IV

GENERAL TERMS AND PROVISIONS

Section 4.01. Terms of Bonds. (A) Unless or except as is otherwise set forth in the Series Resolution authorizing a Series of Bonds or the related Series Certificate, the Bonds of a Series shall be issued in fully registered form or, if permitted by law, book entry or uncertificated form, and may contain such variations, amounts and insertions as are incidental to such differences of numbering, denominations and forms, including variations in the provisions for the registration and transfer of such Bonds.

(B) Unless or except as is otherwise set forth in the Series Resolution authorizing a Series of Bonds or the related Series Certificate, Bonds shall be issued in the denomination of \$5,000, or any multiple of \$5,000 except Capital Appreciation Bonds, which shall be in such denomination as the City and County shall determine in the Series Resolution authorizing a Series of Bonds or the related Series Certificate; and shall be numbered from R-1 upwards in chronological order as issued, or in any other manner determined by the City and County.

(C) Unless or except as is otherwise set forth in the Series Resolution authorizing a Series of Bonds or the related Series Certificate, the principal and Redemption Price (if any) of, and interest on, each Series of the Bonds shall be payable in any coin or currency of the United States of America which at the time of payment is legal tender for public and private debts. Unless or except as is otherwise set forth in the Series Resolutions authorizing a Series of Bonds or the related Series Certificate, the principal and Redemption Price (if any) of each Series of Bonds shall be payable at the Principal Office of the Paying Agent for such Series. Unless or except as is otherwise set forth in the Series Resolution authorizing a Series of Bonds or the related Series Certificate, payment of the interest on each Bond shall be made on each interest payment date to the Holder of record upon the Bond Registry as of the Record Date by check or draft drawn upon the Paying Agent for such Series and mailed to such Holder at such Holder's address as it appears on the Bond Registry kept pursuant to the provisions of **Section 4.05**, or, at the option of the Holder of at least one million dollars (\$1,000,000) in principal amount of Bonds of such Series, by wire transfer to such Holder at the wire transfer address in the continental United States to which such Holder has, not less than five (5) days prior to the Record Date immediately preceding such interest payment date for such Bonds, directed to the Paying Agent for such Series to wire such interest payment.

Section 4.02. Execution of Bonds. Unless or except as otherwise set forth in the Series Resolution provided for their issuance or the related Series Certificate, the Bonds shall be executed with the manual or facsimile signatures of the Mayor of the City and County and countersigned by the manual or facsimile signature of Director of Budget and Fiscal Services or



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a Deputy Director of Budget and Fiscal Services, and the City and County's seal shall be affixed, or a facsimile of the City and County's seal shall be imprinted, on each Bond of a Series originally issued after the adoption of such seal by the City and County. In case any of the officers who shall have signed, attested, authenticated or registered any of the Bonds shall cease to be such officer before such Bonds have been actually issued and delivered, such Bonds shall be valid nevertheless and may be issued by the City and County with the same effect as though the persons who had signed, attested, authenticated or registered such Bonds had not ceased to be such officers.

Section 4.03. *Authentication of Bonds.* Unless or except as otherwise provided in the Series Resolution authorizing a Series of Bonds or the related Series Certificate, Bonds shall bear thereon a certificate of authentication, substantially in the form set forth in the Series Resolution or the Series Certificate, duly executed by the Paying Agent for such Bonds. At any time and from time to time, an Authorized Officer may deliver Bonds executed on behalf of the City and County as aforesaid to the Paying Agent. The Paying Agent shall, at the Written Request of the City and County authenticate and deliver Bonds in the case of each Series of Bonds at the time of their initial delivery, not to exceed the principal amount of such Series authorized by the particular Series Resolution. Upon such authentication of each Bond, the Paying Agent therefor shall endorse on such Bond the date of registration. Such Written Request of the City and County shall be executed and delivered for and on behalf of the City and County by any Authorized Officer authorized to execute the Bonds as aforesaid. No Written Request of the City and County or any other document shall be necessary to authorize authentication of Bonds delivered in accordance with the provisions hereof upon transfers, exchanges or redemption. Only such Bonds as shall bear thereon such certificate of authentication, duly executed by the Paying Agent, shall be entitled to any right or benefit under the Resolution or be secured hereby. No Bond shall be valid or obligatory for any purpose unless such certificate of authentication upon such Bond shall have been duly executed by the Paying Agent. Such certificate of authentication by the Paying Agent therefor upon any Bond shall be conclusive and the only evidence that the Bond so authenticated has been duly authenticated and delivered under the Resolution and that the Holder thereof is entitled to the benefit of the Resolution.

Section 4.04 *Bonds Are Negotiable Instruments.* All of the Bonds shall be negotiable instruments to the extent provided by the Uniform Commercial Code of the State. The City and County, the Paying Agents and any other person may treat the Holder of any Bond as the absolute owner of such Bond for the purpose of making payment thereof and for all other purposes, and neither the City and County nor the Paying Agents shall be bound by any notice or knowledge to the contrary, whether such Bond shall be overdue or not. All payments of or on account of interest to any registered Holder of any Bond (or to his registered assigns), and all payments of or on account of principal to any Holder of any Bond, shall be valid and effectual and shall be a discharge of the City and County and the Paying Agents, in respect of the liability upon the Bonds or claims for interest, as the case may be, to the extent of the sum or sums paid.



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Section 4.05. Bond Registry. At all times during which any Bonds remain outstanding and unpaid, the Paying Agent shall keep or cause to be kept at its Principal Office books (herein referred to as the "Bond Registry") for the registration and transfer of Bonds. Upon presentation at its Principal Office for such purpose the Paying Agent, under such reasonable regulations as it may prescribe, shall register or transfer, or cause to be registered or transferred, on said Bond Registry, Bonds as hereinbefore set forth. The Bond Registry shall at all times be open for inspection by the City and County or its duly authorized agent or representative. At reasonable times and under reasonable procedures established by the Paying Agent, the Bond Registry pertaining to Bonds in registered form and any such lists may be copied by the City and County or inspected and copied by the Holders (or a designated representative thereof) of ten percent (10%) or more in principal amount of Bonds then Outstanding, such ownership and the authority of any such designated representative to be evidenced to the satisfaction of the Paying Agent. The Paying Agent shall furnish to each Paying Agent for a Series of Bonds such information from the Bond Registry at such times as is necessary in order for such Paying Agent to effect payment of the principal and Redemption Price, if any, of and interest on the Bonds of such Series.

Section 4.06. Transfer of Bonds. (A) Any fully registered Bond without coupons, unless or except as may otherwise be provided in the Series Resolution authorizing the issuance of such Bond, may, in accordance with its terms, be transferred upon the Bond Registry required to be kept pursuant to the provisions of **Section 4.05**, by the person in whose name it is registered, in person or by such Holder's duly authorized attorney, upon surrender of such fully registered Bond to the Paying Agent for cancellation, accompanied by delivery of a written instrument of transfer duly executed by the registered Holder in person or such Holder's duly authorized agent, in form satisfactory to the Paying Agent.

(B) Whenever any fully registered Bond shall be surrendered for transfer, the City and County shall execute and deliver, at the Principal Office of the Paying Agent (or send by registered mail to the new Holder thereof at such Holder's request, risk and expense), in the name of the transferee or transferees, a new duly executed fully registered Bond or Bonds, of the same Series, interest rate and maturity and for a like aggregate principal sum. To the extent of denomination authorized in respect of any such Bond, one such fully registered Bond may be transferred for several such fully registered Bonds of the same Series, interest rate, maturity and aggregate principal amount, and several such fully registered Bonds may be transferred for one or several such fully registered Bonds of the same Series, interest rate, maturity and aggregate principal amount. Unless or except as may otherwise be provided in the Series Resolution authorizing the issuance of the Bonds of the Series, all transfers pursuant to this Section shall be made without expense to the Holder of such Bonds, except as otherwise herein provided, and except that the Paying Agent shall require the payment by the Holder of the Bond requesting



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such transfer of any tax or other governmental charges required to be paid with respect to such transfer. All fully registered Bonds surrendered pursuant to this Section shall be canceled.

(C) Unless or except as may otherwise be provided in a Series Resolution, neither the City and County nor the Paying Agent shall be required (a) to transfer or exchange Bonds during a period beginning at the opening of business on the Record Date next preceding an interest payment date on the Bonds or next preceding the date (as determined by the Paying Agent) of any selection of Bonds of a particular Series to be redeemed and ending on such interest payment date, or for a period of fifteen days next preceding the date (as determined by the Paying Agent) of any selection of Bonds to be redeemed or thereafter until after the first mailing of notice of redemption of any proposed redemption of Bonds; or (b) to transfer or exchange any Bonds called for redemption.

Section 4.07. *Exchange of Bonds.* (A) Bonds of a Series, upon surrender thereof at the Principal Office of the Paying Agent, together with an assignment duly executed by the Holder or such Holder's authorized agent in such form as shall be satisfactory to the Paying Agent, may, at the option of the Holder thereof, be exchanged for an equal aggregate principal amount of Bonds of the same Series and maturity, of any denomination or denominations authorized by the Resolution, and bearing interest at the same rate, and in the same form as the Bonds surrendered for exchange. All Bonds of a Series so surrendered pursuant to this Section shall be canceled by the Paying Agent. Any Bonds of a Series to be delivered to the Holder upon any such exchange shall be delivered to the Holder at the Principal Office of the Paying Agent, or sent by mail to the Holder thereof at such Holder's request, risk and expense.

(B) The Series Resolution authorizing the issuance of a Series of Bonds or the related Series Certificate may establish the periods within which the Paying Agent for such Series shall not be required to provide for the exchange of Bonds of such Series.

(C) Unless or except as may otherwise be provided in the Series Resolution authorizing the issuance of the Bonds of a Series or the related Series Certificate, all exchanges pursuant to this Section shall be made without expense to the Holders of such Bonds, except as otherwise herein provided, and except that the Paying Agent shall require the payment by the Holder of the Bond requesting such exchange of any tax or other governmental charges required to be paid with respect to such exchange.

Section 4.08. *Mutilated, Lost, Stolen or Destroyed Bonds.* (A) In case any Bond shall at any time become mutilated in whole or in part, or be lost, stolen or destroyed, or be so defaced as to impair the value thereof to the Holder of such Bond, the City and County shall execute and deliver at the Principal Office of the Paying Agent (or send by registered mail to the Holder thereof at his request, risk and expense), a new Bond of the same series, interest rate and maturity



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and of like tenor and effect in exchange or substitution for and upon the surrender for cancellation of such defaced, mutilated or partly destroyed Bond, or in lieu of or in substitution for such lost, stolen or destroyed Bond. In any such event the applicant for the issuance of a substitute Bond shall furnish the City and County and the Paying Agent evidence or proof satisfactory to an Authorized Officer and the Paying Agent of the loss, destruction, mutilation, defacement or theft of the original Bond, and of the ownership thereof, and also such security and indemnity as may be required by the City and County and the Paying Agent. Any duplicate Bond issued under the provisions of this Section in exchange and substitution for any defaced, mutilated or partly destroyed Bond or in substitution for any allegedly lost, stolen or wholly destroyed Bond, shall be entitled to the identical benefits under the Resolution as was the original Bond in lieu of which such duplicate Bond is issued, and shall be entitled to equal and proportionate benefits with all the other Bonds of the same Series issued hereunder. Neither the City and County nor the Paying Agent nor any other Paying Agent appointed hereunder shall be required to treat both the original Bond and any duplicate Bond as being outstanding for the purpose of determining the principal amount of Bonds which may be issued hereunder or for the purpose of determining any percentage of Bonds outstanding hereunder, but both the original and duplicate Bond shall be treated as one and the same.

(B) Notwithstanding the provisions of subsection (A) of this Section as to the issuance of duplicate or replacement Bonds: (i) if any such lost, stolen, destroyed, defaced or mutilated Bond has matured or been called for redemption and the date fixed for the redemption thereof has arrived, at the opinion of the City and County, payment of the amount due thereon may be made without the issuance of any duplicate or replacement Bond upon receipt of like evidence, indemnity, security and expenses and the surrender for cancellation of any such defaced or mutilated Bond and upon such other conditions as the City and County may prescribe; (ii) if any such lost, stolen, destroyed, defaced or mutilated Bond shall mature or is of a class or Series which shall mature within one year following the date of application for a duplicate Bond, or has been called or will be called, or is in a class or Series which has been called or will be called, for redemption within one year following such date, instead of issuing a duplicate or replacement Bond the City and County upon receiving like evidence, indemnity, security and expenses and the surrender for cancellation of any such defaced or mutilated Bond and upon such other conditions as the City and County may prescribe, may issue or cause to be issued a transferable certificate of ownership to the applicant and pay on such certificate the interest and the redemption price or the principal sum thereof, on the interest payment dates and the redemption date or maturity date, upon surrender of such certificate, and all such transferable certificates of ownership shall be in such form as may be determined by the City and County or as otherwise provided by law; and (iii) if the provisions of applicable law shall provide for the payment of lost, stolen, destroyed, mutilated or defaced Bonds in lieu of the issuance of duplicates or certificates of ownership therefor, such lost, stolen, destroyed, mutilated or defaced Bonds may be paid in accordance with the provisions of such laws.



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(C) All expenses necessary for the providing of any duplicate Bond or certificate of ownership shall be borne by the applicant therefor.

Section 4.09. *Disposition and Destruction of Bonds and Coupons.* (A) All Bonds and coupons surrendered to the Paying Agent for such Bonds for payment shall be canceled upon such payment by such Paying Agent.

(B) All canceled Bonds shall be delivered to the City and County or as it may direct. Upon the written request of the City and County, such Paying Agent, however, in lieu of such cancellation and delivery, may destroy such Bonds. If any Bonds are destroyed by a Paying Agent, the City and County may require that such destruction be done in the presence of its appointee or officer. If a Paying Agent shall destroy any Bonds, it shall deliver a certificate of such destruction to the City and County.

Section 4.10. *Temporary Bonds.* Any Series of Bonds may be initially issued in temporary form exchangeable for definitive Bonds when ready for delivery. The temporary Bonds may be printed, lithographed or typewritten, shall be of such denomination as may be determined by the City and County, and may contain such reference to any of the provisions of the Resolution as may be appropriate. Every temporary Bond shall be executed by the City and County upon the same conditions and in substantially the same manner as the definitive Bonds. If the City and County issues temporary Bonds it will execute and furnish definitive Bonds without delay, and thereupon the temporary Bonds shall be surrendered, for cancellation, at the Principal Office of the Paying Agent and the Paying Agent shall deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of authorized denominations, of the same Series and maturity or maturities. Until so exchanged, the temporary Bonds shall be entitled to the same benefits under the Resolution as definitive Bonds delivered under the Resolution.

Section 4.11. *CUSIP Identification Numbers.* At the sole option of the City and County, CUSIP identification numbers may be printed on the Bonds of any Series of Bonds, but no such number shall be deemed to be a part of any Bond or a part of the contract evidenced thereby, and no liability shall hereafter attach to the City and County or any officer or agent thereof (including the Paying Agents) because of or on account of said CUSIP identification numbers or any use made thereof.

Section 4.12. *Book-Entry Bonds.* (A) The Bonds of any Series may be issued as Book-Entry Bonds. For each Series of Bonds issued as Book-Entry Bonds, the Bonds shall be issued in the form of one or more fully-registered immobilized certificate for each Series



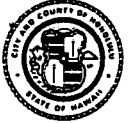
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representing the aggregate principal amount of the Bonds of such Series, which Bonds shall (except as provided in paragraph (H) below) be registered in the name of the Depository or its nominee; provided that if the Depository shall request that the Bonds be registered in the name of a different nominee, the Paying Agent shall exchange all or any portion of the Bonds by Series for an equal aggregate principal amount of Bonds registered in the name of such other nominee or nominees of the Depository. No person other than the Depository or its nominee shall be entitled to receive from the City and County or the Paying Agent either a Bond or any other evidence of ownership of the Bonds, or any right to receive any payment in respect thereof unless the Depository or its nominee shall transfer record ownership of all or any portion of the Bonds by Series on the Bond Registry, in connection with discontinuing the book-entry system as provided in paragraph (H) below or otherwise.

(B) Except as otherwise provided herein or in a Series Resolution, so long as the Bonds or any portion thereof are registered in the name of the Depository or any nominee thereof, all payments of the principal or redemption price of or interest on such Bonds shall be made to the Depository or its nominee in immediately available funds on the dates provided for such payments under the Resolution or a Series Resolution and at such times as provided in the representation letter delivered to the Depository. Each such payment to the Depository or its nominee shall be valid and effective to fully discharge all liability of the City and County or the Paying Agent with respect to the principal or Redemption Price, if any, of or interest on the Bonds to the extent of the sum or sums so paid. In the event of the redemption of less than all of the Bonds Outstanding of any maturity, the Paying Agent for such Bonds shall not require surrender by the Depository or its nominee of the Bonds so redeemed, but the Depository (or its nominee) may retain such Bonds and make an appropriate notation on the Bond certificate as to the amount of such partial redemption; provided that the Depository shall deliver to the Paying Agent, upon request, a written confirmation of such partial redemption and thereafter the records maintained by the Paying Agent shall be conclusive as to the amount of the Bonds of such maturity which have been redeemed.

(C) All transfers of the Bonds of such Series issued in Book-Entry Form shall be effected as set forth in Sections 3.06 and 3.07 of the Resolution; *provided* that the City and County understands and agrees that the Depository shall establish procedures with its participants for recording and transferring the ownership of beneficial interests in each Bond of such Series.

(D) Except as otherwise provided herein or in a Series Resolution, the City and County and the Paying Agent may treat the Depository (or its nominee) as the sole and exclusive Holder of the Bonds registered in its name for the purposes of payment of the principal or redemption price, if any, of or interest on the Bonds, selecting the Bonds or portions thereof to be redeemed, giving any notice permitted or required to be given to Bondholders under the Resolution (except that for purposes of notice to the Depository, such notice shall be given at least two (2) days prior to the date of any required notice to Bondholders), registering the transfer



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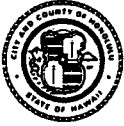
of Bonds, obtaining any consent or other action to be taken by Bondholders and for all other purposes whatsoever; and neither the City and County nor the Paying Agent shall be affected by any notice to the contrary. Neither the City and County nor the Paying Agent shall have any responsibility or obligation to any participant in the Depository, any person claiming a beneficial ownership interest in the Bonds under or through the Depository or any such participant, or any other person which is not shown on the Bond Registry as being a Holder, with respect to either: (1) the Bonds; or (2) the accuracy of any records maintained by the Depository or any such participant; or (3) the payment by the Depository or any such participant of any amount in respect of the principal or redemption price, if any, of or interest on the Bonds; or (4) any notice which is permitted or required to be given to Holders under the Resolution; or (5) the selection by the Depository or any such participant of any person to receive payment in the event of a partial redemption of the Bonds; or (6) any consent given or other action taken by the Depository as Holder,

(E) So long as the Bonds or any portion thereof are registered in the name of the Depository or any nominee thereof, all notices required or permitted to be given to the Bondholders under the Resolution shall be given to the Depository as provided in the representation letter to be delivered to the Depository, in form and content satisfactory to the Depository, the City and County and the Paying Agent for such Bond.

(F) In connection with any notice or other communication to be provided to Bondholders pursuant to the Resolution by the City and County or the Paying Agent with respect to any consent or other action to be taken by Bondholders, the Depository shall consider the date of receipt of notice requesting such consent or other action as the record date for such consent or other action, provided that the City and County or the Paying Agent may establish a special record date for such consent or other action. The City and County or the Paying Agent shall give the Depository notice of such special record date not less than fifteen (15) calendar days in advance of such special record date to the extent possible.

(G) Any successor Paying Agent shall, in its written acceptance of its duties as a paying agent, agree to take any actions necessary from time to time to comply with the requirements of the Representation Letter.

(H) The book-entry system for registration of the ownership of the Book-Entry Bonds may be discontinued at any time if either: (1) after notice to the City and County and the Paying Agent, the Depository determines to resign as securities depository for such Bonds; or (2) after notice to the Depository and the Paying Agent, the City and County determines that a continuation of the system of book-entry transfers through the Depository (or through a successor securities depository) is not in the best interests of the City and County. In each of such events (unless in the case described in clause (2) above, the City and County appoints a successor securities depository), the Bonds shall be delivered in registered certificate form to such persons, and by Series in such maturities and principal amounts, as may be designated by



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the Depository, but without any liability on the part of the City and County or the Paying Agent for the accuracy of such designation, Whenever the Depository requests the City and County to do so, the City and County shall cooperate with the Depository in taking appropriate action after reasonable notice to arrange for another securities depository to maintain custody of certificates evidencing the Bonds.

(I) The City and County may hereafter amend any Series Resolution authorizing the issuance of a Series of Bonds, without notice to, or consent of, the Bondholders of any of the Series of Bonds in order: (i) to offer to Bondholders, the option of receiving the Bonds of any Series in certificated form, or (ii) to require the execution and delivery of certificates representing a portion or all of any Series of Bonds: (A) if the Depository shall cease to serve as a securities depository and no successor can be found to serve upon terms satisfactory to the City and County, or (B) if the City and County determines that it would be in its best interest or in the best interests of Bondholders of any Series of Bonds that they obtain certificates.



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ARTICLE V

REDEMPTION OF BONDS

Section 5.01. *Redemption of Bonds.* The Bonds of a Series shall be subject to redemption prior to their stated maturities upon such terms and conditions and at such dates and redemption prices or premiums as shall be set forth in the Series Resolution authorizing a Series of Bonds or a Series Certificate relating to such Bonds, and upon the further terms and conditions as are hereinafter set forth.

Section 5.02. *Selection of Bonds for Redemption.* In the event of the redemption at any time of only a part of the Bonds of a Series, the Bonds to be redeemed shall be redeemed in such order as is set forth in the Series Resolution authorizing a Series of Bonds or a Series Certificate relating to such Bonds. Whenever provision is made in any Series Resolution for the selection by lot of Bonds to be redeemed, the Paying Agent for such Bonds in any manner which it deems fair shall select the particular Bonds to be redeemed from among those Bonds which are then subject to redemption and to selection by lot for such redemption. The Paying Agent shall promptly notify the City and County and each other Paying Agent for the Bonds of the Series of Bonds of which such Bond to be redeemed is one, in writing, of the numbers of the Bonds so selected for redemption.

Section 5.03. *Notice of Redemption.* (A) Notice of the redemption of any Bond shall be mailed not less than thirty (30) days prior to the redemption date, by registered, certified or regular first-class mail, to the Holder of such Bond of record as of the forty-fifth (45th) day (whether or not a business day) next preceding the date fixed for redemption at his address as it appears on the Bond Registry. Notice of redemption of Bonds may, at the sole option of the City and County, also be given by publication (except as provided below), not less than thirty (30) days prior to the date fixed for the redemption thereof, of one such notice in one issue of an Authorized Newspaper. Failure to receive such notice by any Holder of any Bond, nor any defect in any notice so mailed, shall not affect the sufficiency of the proceedings for the redemption of any of such Bonds.

(B) The City and County, at its election, may provide in a notice of redemption of Bonds that such redemption is conditional upon the occurrence or non-occurrence of an event.

(C) The City and County shall give written notice to the Paying Agent of its election to redeem Bonds at least forty-five (45) days prior to the redemption date, or such shorter period as shall be acceptable to the Paying Agent and if notice of redemption is to be published by the Paying Agent, such notice shall contain all the information necessary to enable the Paying Agent



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to publish the notice of redemption in the manner aforesaid. As to Bonds which are redeemable by the Paying Agent without action being taken by the City and County under the terms of the Resolution, the Paying Agent shall proceed to mail without further direction from the City and County, and at the Written Request of the City and County, also publish, notice of redemption of such Bonds at the time specified in the Resolution. Whenever notice of redemption has been duly given as herein provided the Paying Agent shall, at least three (3) days prior to the date fixed for redemption in such notice, transfer to the Paying Agent or Paying Agents for the Bonds so to be redeemed amounts in cash which, in addition to other moneys, if any, held by such Paying Agent or Paying Agents for such purpose, will be sufficient to redeem on the redemption date, all the Bonds so to be redeemed.

(D) Each notice of redemption, whether published or mailed, shall state: (i) the title of the Bonds to be redeemed, the Series designation (if any) thereof, the redemption date, the place or places of redemption and the Redemption Price or redemption premium, if any, payable upon such redemption; (ii) if less than all the Bonds of a particular Series are to be redeemed, the numbers of the Bonds to be redeemed; (iii) that the interest on the Bonds, or on the principal amount thereof to be redeemed, designated for redemption in such notice shall cease to accrue from and after such redemption date; and (iv) that on said date there will become due and payable on each said Bond the principal amount thereof to be redeemed at the then applicable Redemption Price (or together with the then applicable redemption premium, if any) and the interest accrued on such principal amount to the redemption date, provided that in the event such notice is conditional upon the occurrence or non-occurrence of an event, clauses (iii) and (iv) shall be adapted to reflect such conditional nature of the call. Each notice of redemption mailed to the Holder of a fully registered Bond to be redeemed shall, if less than the entire principal sum thereof is to be redeemed, also state the principal amount thereof to be redeemed and that such fully registered Bond must be surrendered to the Paying Agent in exchange for the payment of the principal amount thereof to be redeemed and the issuance of a new Bond or Bonds equal in principal amount to that portion of the principal sum not to be redeemed of the Bond to be surrendered, as provided in **Section 5.04**.

(E) The Paying Agent shall not give any notice of redemption of Bonds, whether by mail, publication or otherwise, other than redemption by mandatory Sinking Fund Installments and excepting any notice which refers to Bonds which are to be advance refunded, unless the City and County has deposited in the Debt Service Subaccount sufficient funds to pay the redemption price of the Bonds to be redeemed or such redemption of Bonds is conditional as in **Section 5.03(B)** provided.

Section 5.04. Partial Redemption of Bonds. In the event that part only of the principal sum of a Bond shall be called for redemption or prepaid, payment of the amount to be redeemed or prepaid shall be made only upon surrender of such Bond to the Paying Agent. Upon surrender of such Bond, the City and County shall execute and deliver to the registered owner thereof, at



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the Principal Office of the Paying Agent, a new fully executed Bond or Bonds, of authorized principal sums equal in aggregate principal amount to, and of the same Series, maturity and interest rate as the unredeemed portion of the Bond surrendered.

Section 5.05. *Effect of Redemption.* If a Bond is subject by its terms to prior redemption and has been fully called for redemption and notice of the redemption thereof has been duly given as hereinbefore provided and if moneys for the payment of such Bond (or of the principal amount thereof to be redeemed) at the then applicable Redemption Price or together with the then applicable premium, if any, and the interest to accrue to the redemption date on such Bond (or the principal amount thereof to be redeemed) are held for the purpose of such payment by the Paying Agent or other Paying Agent for the Series of Bonds of which such Bond is one, then such Bond (or the principal amount thereof to be redeemed) so called for redemption shall, on the redemption date designated in such notice, become due and payable, and interest on said Bond (or the principal amount thereof to be redeemed) so called for redemption shall cease to accrue.

Section 5.06. *Cancellation of Redeemed Bonds.* All Bonds surrendered or redeemed pursuant to the provisions of this Article shall be canceled.



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ARTICLE VI

FUNDS, AND SUBACCOUNTS; INVESTMENT OF MONEYS

Section 6.01. *Establishment of Funds, and Subaccounts.* (A) There has heretofore been established in the City and County Treasury pursuant to Section 14-8.1 of the City Code a special fund known as the "Sewer Fund" (the "Sewer Fund") into which all Revenues collected by the City and County have been and shall be deposited, from which the Revenues have been and shall be appropriated and expended for operating expenses of the Wastewater System, debt service on Reimbursable Obligations and other purposes of the Wastewater System, and in which certain working capital and operating reserves for purposes of the Wastewater System have been and shall be maintained. In addition there has heretofore been established certain accounts in the Sewer Fund pursuant to the First Bond Resolution. All such Funds and Accounts shall continue so long as any Bonds are Outstanding.

(B) There are hereby created and established in Subordinate Obligation Account established by the First Bond Resolution the following additional special subaccounts of the City and County to be maintained so long as any Bonds are Outstanding:

- (1) Debt Service Subaccount;
- (2) Common Reserve Subaccount;
- (3) Rebate Subaccount;
- (4) Third Lien Obligation Subaccount;

(C) There has heretofore been established in the City and County Treasury pursuant to Section 6-54.1 of the City Code a special fund known as the "Sewer Revenue Bond Improvement Fund" (the "Improvement Fund") into which the proceeds of revenue bonds of the City and County issued to pay the costs of improvements to, repairs to and maintenance of the Wastewater System appropriated in the capital budget ordinances of the City and County, and any amendments thereto, and specified to be expended from such fund.

(D) There is hereby created and established in the Improvement Fund a special account of the City and County to be held in trust for the benefit of the Holders of the Bonds and maintained so long as any Bonds are Outstanding known as the "Improvement Second Account" (the "Improvement Second Account"). The Improvement Second Account shall be deemed to be an Account held under the Resolution for purposes of the pledge made in **Section 3.02.**



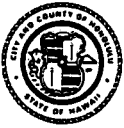
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(E) There may be created and established from time to time in the Sewer Fund a Separate Series Reserve Account for the Bonds of a Series which are not entitled to the benefits of the Common Reserve Account. Such Separate Series Reserve Account may be created by the Series Resolution authorizing the Series of Bonds or the related Series Certificate as provided in **Section 3.04**.

Section 6.02. Sewer Fund. (A) As provided in the First Bond Resolution, from and after the time of delivery of the first bond authenticated and delivered under the First Bond Resolution, Revenues shall continue to be collected by the Department and deposited, as soon as practicable, into the Sewer Fund so long as any Bond is Outstanding such collection shall continue. As provided in the First Bond Resolution, from the amounts deposited in the Sewer Fund, the Department shall transfer to the Wastewater System Facility Charge Account all moneys received as Wastewater System Facility Charges, pay the current Operation and Maintenance Expenses of the Department, transfer to the Rebate Account such amount as is necessary to pay the rebate amount due the United States Treasury Department under Section 148 of the Code or to set aside as a reserve for such payment and make the transfers to other Funds and Accounts as in subsection (B) of this **Section 6.02** provided. In addition, there shall be deposited in the Sewer Fund all other amounts required by the City Charter and the Resolution to be so deposited.

(B) In each month, the City and County, after making the transfer, if any, to the Wastewater System Facility Charge Account of all moneys received as Wastewater System Facility Charges, paying the Operating and Maintenance Expenses for such month and setting aside an amount sufficient to pay the Operating and Maintenance Expenses expected to be incurred for the balance of such month making the transfer, if any, to the Rebate Account as provided in **Section 6.07** of the First Bond Resolution, making all credits required by the First Bond Resolution to the Debt Service Account and Common Reserve Account created thereby, and reserving a reasonable and necessary amount in the Sewer Fund for working capital and operating reserves, shall apply or transfer to the Subordinate Obligation Account created by the First Bond Resolution on the fifth (5th) day prior to the end of each month, unless otherwise provided below, a sufficient amount of moneys to provide for the following credits in the following order of priority:

- (1) To the Rebate Subaccount such amount as is provided in **Section 6.07**;
- (2) To the Debt Service Subaccount, if and to the extent required so that the balance in the Debt Service Subaccount shall equal the Accrued Debt Service for all Bonds Outstanding and the interest accrued on all Bond Anticipation Note outstanding on said date;



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(3) (a) To the Common Reserve Subaccount, if and to the extent required either (i) an amount such that the balance in the Common Reserve Subaccount shall equal the Common Reserve Subaccount Requirement on said date, or (ii) an amount such that if the same amount were deposited in each month the amount of any deficiency in the Common Reserve Subaccount shall be eliminated at the end of the sixth (6th) month following the first credit; and (b) To each Separate Series Reserve Subaccount, if and to the extent required either (i) an amount such that the balance in each Separate Series Reserve Subaccount shall equal the Separate Series Reserve Subaccount Requirement for each Separate Series Reserve Subaccount on said date, or (ii) an amount such that if the same amount were deposited in each month the amount of any deficiency in each Separate Series Common Reserve Subaccount shall be eliminated at the end of the sixth (6th) month following the first credit; *provided, however*, that such transfers shall be *pro rata*, based on the proportion of the Common Reserve Subaccount Requirement and each Separate Series Reserve Subaccount Requirement to the sum of the Common Reserve Subaccount Requirement and all Separate Series Reserve Subaccount Requirements;

(4) To the Third Lien Obligation Subaccount, the amount, if any, equal to all Third Lien Obligation Requirements theretofore accrued and unpaid and not met from any other source and to accrue and become payable during the succeeding calendar month and not met from any other source.

(C) All reasonable and necessary Operation and Maintenance Expenses shall be paid from the Sewer Fund as the same become due and payable and, except for the Rebate Account created by the First Bond Resolution, prior to any transfer or payment to other funds and accounts set forth herein.

(D) The City and County may, if provided in a Series Resolution authorizing the Bonds of a Series or a Series Certificate relating to such Bonds, directly pay out of the Third Lien Obligation Account reimbursements to Support Facility Providers whose Support Facilities have been drawn upon in the same priority and order as payments from the Third Lien Obligation Account to the Debt Service Subaccount, the Common Reserve Subaccount, each Separate Series Reserve Subaccount or other Funds, Accounts and Subaccounts as if such payments were part of such Funds, Accounts and Subaccounts.

Section 6.03. Debt Service Subaccount; Common Reserve Subaccount; Separate Series Reserve Subaccounts. (A) **Debt Service Subaccount.** (1) The City and County shall pay out of the Debt Service Subaccount to each Paying Agent: (i) on or before each interest payment date for any of the Bonds or Bond Anticipation Notes the amount required for the interest payable on such date; (ii) on or before each principal payment date, an amount equal to the principal, if any, due on such date by reason of maturity or by reason of the payment of any Sinking Fund Installment; and (iii) on or before any redemption date for the Bonds, the amount



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required for the payment of the Redemption Price of and interest on the Bonds then to be redeemed. Such amounts shall be applied by each Paying Agent on and after the due dates thereof. The City and County shall also pay out of the Debt Service Subaccount the accrued interest included in the purchase price of Bonds purchased for retirement.

(2) Amounts accumulated in the Debt Service Subaccount by reason of the payment of any Sinking Fund Installment may be applied by the City and County, on or prior to the sixtieth (60th) day preceding the due date of such Sinking Fund Installment, to: (i) the purchase of Bonds of the maturity for which such Sinking Fund Installment was established, or (ii) the redemption of such Bonds at the applicable Redemption Price, if then redeemable by their terms. All such purchases of Bonds shall: (i) be made at prices not exceeding the applicable Redemption Price of such Bonds plus accrued interest; (ii) be made as arranged by the City and County in such manner and from such sellers or brokers at such prices as the City and County shall determine; and (iii) be made to insure that delivery of the Bonds so purchased shall not occur later than the sixtieth (60th) day next preceding the redemption date to which the Sinking Fund Installment is to be applied. The applicable Redemption Price of any Bonds (or principal amount of maturing Bonds) so purchased or redeemed shall be deemed to constitute part of the Debt Service Subaccount until such Sinking Fund Installment date, for the purpose of calculating the amount of such Subaccount. As soon as practicable after the sixtieth (60th) day preceding the due date of any such Sinking Fund Installment, the City and County shall proceed to call for redemption on such due date Bonds of the maturity for which such Sinking Fund Installment was established (except in the case of Bonds maturing on a Sinking Fund Installment date) in such amount as shall be necessary to complete the retirement of the unsatisfied balance of such Sinking Fund Installment after making allowance for any Bonds purchased or redeemed pursuant to this Section 6.03 which the City and County has applied as a credit against such Sinking Fund Installment as provided in paragraph (4) of subsection (A) of this Section 6.03. The City and County shall pay out of the Debt Service Subaccount to the appropriate Paying Agents, on or before the redemption date, the amount required for the redemption of the Bonds so called for redemption, and such amount shall be applied by such Paying Agents to such redemption.

(3) The amount, if any, credited to the Debt Service Subaccount from a Series Improvement Second Interest Subaccount (as hereafter defined) shall be applied to the payment of interest on the Bonds as the same becomes due and payable as provided in Section 6.10(D).

(4) Upon any purchase or redemption pursuant to paragraph (2) of subsection (A) of this Section 6.03 of Bonds of any Series and maturity for which Sinking Fund Installments shall have been established: (i) if the principal amount of the Bonds so purchased is less than or equal to the next succeeding Sinking Fund Installment for such Series there shall be credited to the next such Sinking Fund Installment an amount equal to the principal amount of the Bonds of such Series so purchased; and (ii) if the principal amount of the Bonds so purchased is greater than the next succeeding Sinking Fund Installment, there shall be credited toward each such Sinking Fund Installment thereafter to become due an amount bearing the same ratio to such



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Sinking Fund Installment as the total principal amount of such Bonds so purchased or redeemed bears to the total principal amount of all such Sinking Fund Installments to be so credited or, at the option of the City and County, an amount equal to the next succeeding Sinking Fund Installment. The portion of any such Sinking Fund Installment remaining after the deduction of any such amounts credited toward the same (or the original amount of any such Sinking Fund Installment if no such amounts shall have been credited toward the same) shall constitute the unsatisfied balance of such Sinking Fund Installment for the purpose of calculation of Sinking Fund Installments due on a future date.

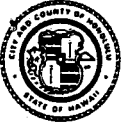
(5) Moneys set aside from time to time with any Paying Agent for the purpose of paying the principal and Redemption Price (if any) of, and interest on, the Bonds shall be held in trust for the Holders of the Bonds in respect of which the same shall have been so set aside. Until so set aside, all moneys in the Debt Service Subaccount shall be held in trust for the benefit of the Holders of all Bonds at the time outstanding, equally and ratably.

(6) When Bonds of a Series are refunded in whole or in part or are otherwise paid within the meaning of **Article XII**, moneys may be withdrawn from the Debt Service Subaccount to pay or provide for the payment of such Bonds or refunded Bonds, as the case may be; *provided* that immediately after such withdrawal or transfer there shall be on credit to the Debt Service Subaccount an amount equal to the Accrued Debt Service for the Bonds then Outstanding after taking into account such refunding or payment.

(B) **Common Reserve Subaccount.** (1) If on the day preceding any principal or interest payment date, the amount in the Debt Service Subaccount shall be less than Accrued Debt Service for all Bonds then Outstanding which are entitled to the benefit of the Common Reserve Subaccount, the City and County shall pay out of the Common Reserve Subaccount to each Paying Agent for such Bonds the amount necessary to satisfy the deficiency for payment to the holders of such Bonds. Amounts so applied shall be derived first, from cash or Investments Securities on credit to the Common Reserve Subaccount and second, from draws or demands on Support Facilities held as a part thereof, such draws or demands to be made *pro rata* among all such Support Facilities based on the respective available amounts thereunder and upon the terms and conditions set forth in such Support Facilities.

(2) Whenever the amounts on deposit in the Common Reserve Subaccount shall exceed the Common Reserve Subaccount Requirement, the City and County shall withdraw the amount of such excess and deposit such excess to the credit of the Debt Service Subaccount or the Sewer Fund, as the City and County shall determine.

(3) Whenever the amount (exclusive of Support Facilities) in the Common Reserve Subaccount, together with the amount in the Debt Service Subaccount attributable to Bonds entitled to the benefit of the Common Reserve Subaccount, is sufficient to pay in full the principal or Redemption Price, if any, of and interest on all such Outstanding Bonds in



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accordance with their terms, the funds on credit to the Common Reserve Subaccount shall be transferred to the Debt Service Subaccount. Prior to said transfer, all Investment Securities held in the Common Reserve Subaccount shall be liquidated by the City and County to the extent necessary to provide for timely payment of the principal or Redemption Price, if any, of and interest on such Bonds.

(4) When Bonds of a Series entitled to the benefit of the Common Reserve Subaccount are refunded in whole or in part or are otherwise paid within the meaning of Article XII, moneys may be withdrawn from the Common Reserve Subaccount to pay or provide for the payment of such Bonds or refunded Bonds, as the case may be; *provided* that immediately after such withdrawal or transfer there shall be on credit to the Common Reserve Subaccount an amount equal to the Common Reserve Subaccount Requirement for the Bonds entitled to the benefit of the Common Reserve Subaccount then Outstanding after taking into account such refunding or payment.

(5) The City and County may determine in the Series Resolution authorizing a Series of Bonds or a Series Certificate related to a Series of Bonds that such Series of Bonds shall not be entitled to the benefit of the Common Reserve Subaccount, in which case no amount shall be required from the proceeds of such Series of Bonds for credit to the Common Reserve Subaccount and no amount shall be payable from the Common Reserve Subaccount to pay amounts due or payable with respect to such Series of Bonds.

(6) The Common Reserve Subaccount Requirement shall be calculated or recalculated: (i) at the time of issuance of a Series of Bonds (or Bond Anticipation Notes); (ii) at the time a Series of Bonds is retired in its entirety; (iii) at such other time as in the Opinion of Counsel is required to maintain the exclusion of interest on the Tax-exempt Bonds from gross income for federal income taxation purposes.

(C) ***Separate Series Reserve Subaccounts.*** (1) If on the day preceding any principal or interest payment date, the amount in the Debt Service Subaccount shall be less than Accrued Debt Service for the Bonds of a Series then Outstanding which are entitled to the benefit of a Separate Series Reserve Subaccount, the City and County shall pay out of such Separate Series Reserve Subaccount to the Paying Agent for such Bonds the amount necessary to satisfy the deficiency for payment to the holders of such Bonds. Amounts so applied shall be derived first, from cash or Investments Securities on credit to such Separate Series Reserve Subaccount and second, from draws or demands on Support Facilities held as a part thereof, such draws or demands to be made *pro rata* among all such Support Facilities based on the respective available amounts thereunder and upon the terms and conditions set forth in such Support Facilities.

(2) Whenever the amounts on deposit in any Separate Series Reserve Subaccount shall exceed the applicable Separate Series Reserve Subaccount Requirement, the City and



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County shall withdraw the amount of such excess and deposit such excess to the credit of the Debt Service Subaccount or the Sewer Fund, as the City and County shall determine.

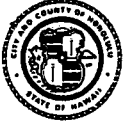
(3) Whenever the amount (exclusive of Support Facilities) in any Separate Series Reserve Subaccount, together with the amount in the Debt Service Subaccount attributable to Bonds entitled to the benefit of such Separate Series Reserve Subaccount, is sufficient to pay in full the principal or Redemption Price, if any, of and interest on all such Outstanding Bonds in accordance with their terms, the funds on credit to such Separate Series Reserve Subaccount shall be transferred to the Debt Service Subaccount. Prior to said transfer, all Investment Securities held in such Separate Series Reserve Subaccount shall be liquidated by the City and County to the extent necessary to provide for timely payment of the principal or Redemption Price, if any, of and interest on such Bonds.

(4) When Bonds of a Series entitled to the benefit of a Separate Series Reserve Subaccount are refunded in whole or in part or are otherwise paid within the meaning of Article XII, moneys may be withdrawn from such Separate Series Reserve Subaccount to pay or provide for the payment of such Bonds or refunded Bonds, as the case may be; *provided* that immediately after such withdrawal or transfer there shall be on credit to such Separate Series Reserve Subaccount an amount equal to the Separate Series Reserve Subaccount Requirement for the Bonds then Outstanding which are entitled to the benefit of such Separate Series Reserve Subaccount after taking into account such refunding or payment.

(5) Each Separate Series Reserve Subaccount Requirement shall be calculated or recalculated: (i) at the time of issuance of a Series of Bonds (or Bond Anticipation Notes); (ii) at the time a Series of Bonds is retired in its entirety; (iii) at such other time as in the Opinion of Counsel is required to maintain the exclusion of interest on the Tax-exempt Bonds from gross income for federal income taxation purposes.

(6) The foregoing provisions of this subsection (C) may be modified in whole or in part with respect to any Series of Bonds entitled to the benefits of a Separate Series Reserve Subaccount. Any such modification shall be set forth in the Series Resolution authorizing such Series of Bonds or the related Series Certificate.

Section 6.04. *Renewal and Replacement Account.* (A) Moneys shall be credited to the Renewal and Replacement Account only as provided in paragraph (6) of subsection (B) of Section 6.02 of the First Bond Resolution. As provided in the First Bond Resolution, moneys on credit in the Renewal and Replacement Account may be applied to the Costs of Improvements to, or the reconstruction of, the Wastewater System, emergency repairs of the Wastewater System, and major or extraordinary repairs, renewals or replacements of the Wastewater System, in each case to be set forth in the Annual Budget: (a) to restore or prevent physical damage to the



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Wastewater System or any part thereof; (b) for the safe and efficient operation of the Wastewater System; or (c) to prevent loss of Revenues.

(B) Subject to application of money on credit to the Renewal and Replacement Account as provided in the First Bond Resolution, if on the day preceding any interest payment date the moneys in the Debt Service Subaccount, after making the transfer from the Common Reserve Subaccount as provided in **paragraph (1) of subsection (B) of Section 6.03**, from each Separate Series Reserve Account as provided in **paragraph (1) of subsection (C) of Section 6.03** and from the Wastewater General Account as provided in **subsection (A) of Section 6.08**, shall be insufficient to pay the interest, principal and Redemption Price becoming due on the Bonds, the City and County shall transfer from the Renewal and Replacement Account for credit to the Debt Service Subaccount the amount necessary (or all the moneys in said Fund if less than the amount necessary) to eliminate such deficiency.

(C) Subject to application of money on credit to the Renewal and Replacement Account as provided in the First Bond Resolution, if on each January 1 and July 1, (i) the moneys, Investment Securities and amount of Support Facilities in the Common Reserve Subaccount are less than the Common Reserve Subaccount Requirement, and the transfer referred to in **subsection (B) of this Section 6.04** shall have theretofore been made, the City and County shall transfer from the Renewal and Replacement account for credit to the Common Reserve Subaccount the amount necessary (or all the moneys in said Fund if less than the amount necessary) to eliminate such deficiency; and (ii) the moneys, Investment Securities and amount of Support Facilities in any Separate Series Reserve Subaccount are less than the Separate Series Reserve Subaccount Requirement for such Separate Series Reserve Subaccount, and the transfer referred to in **subsection (B) of this Section 6.04** shall have theretofore been made, the City and County shall transfer from the Renewal and Replacement Account for credit to such Separate Series Reserve Subaccount the amount necessary (or all the moneys in said Fund if less than the amount necessary) to eliminate such deficiency; *provided, however*, that such transfers shall be *pro rata*, based on the proportion of the Common Reserve Subaccount Requirement and each Separate Series Reserve Subaccount Requirement to the sum of the Common Reserve Subaccount Requirement and all Separate Series Reserve Subaccount Requirements.

(D) Subject to application of moneys on credit to the Renewal and Replacement Account as provided in the First Bond Resolution, if the moneys on credit to the Third Lien Obligation Subaccount are less than the Third Lien Obligation Requirement, and the transfers referred to in **subsections (B) and (C) of this Section 6.04** shall have theretofore been made, the City and County shall transfer from the Renewal and Replacement Subaccount to the Third Lien Obligation Subaccount the amount necessary (or all the moneys in said Account if less than the amount necessary) to eliminate such deficiency.

(E) As provided in the First Bond Resolution, if the moneys on deposit in the Reimbursable Obligation Account are less than the Reimbursable Obligation Requirement, and



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the transfers referred to in subsections (B), (C) and (D) of this Section 6.04 shall have theretofore been made, the City and County shall transfer from the Renewal and Replacement Account to the Reimbursable Obligation Account the amount necessary (or all the moneys in said Fund if less than the amount necessary) to eliminate such deficiency.

Section 6.05. *Third Lien Obligation Subaccount.* The City and County shall at all times maintain in the Third Lien Obligation Subaccount an amount equal to the Third Lien Obligation Requirement. Moneys on credit to the Third Lien Obligation Subaccount shall be applied by the City and County solely in accordance with the provisions of, and subject to the priorities and limitations and restrictions provided in, the resolution, indenture or other instrument of the City and County securing or evidencing such Third Lien Obligations. Any moneys credited to the Third Lien Obligation Subaccount shall be immediately free and clear of the lien and pledge created by the Resolution.

Section 6.06. *Reimbursable Obligation Account.* As provided in the First Bond Resolution, the City and County shall at all times maintain in the Reimbursable Obligation Account an amount equal to the Reimbursable Obligation Requirement. As provided in the First Bond Resolution, moneys on deposit in the Reimbursable Obligation Account shall be applied by the City and County solely to reimburse the General Fund of the City and County for payment of debt service due on Reimbursable Obligations issued or to be hereafter issued by the City and County with respect to the Wastewater System. Any moneys deposited in the Reimbursable Obligation Account shall be immediately free and clear of the lien and pledge created by the Resolution.

Section 6.07. *Rebate Subaccount.* (A) If and to the extent required by the Code, an Authorized Officer shall periodically, at such times as may be required to comply with the Code, determine the amount of Rebateable Amount with respect to each Series of Tax-exempt Bonds and thereafter (i) transfer from any of the Funds, Accounts and Subaccounts pledged or held hereunder other than the Debt Service Subaccount, the Third Lien Obligation Subaccount and the Reimbursable Obligation Account and credit to the Rebate Subaccount, all or a portion of the Rebateable Amount with respect to such Series of Bonds and (ii) pay out of the Rebate Subaccount to the Department of the Treasury of the United States of America the amount, if any, required by the Code to be rebated thereto. Moneys in the Rebate Subaccount and the subaccounts therein are not available for the benefit of the Holders of the Bonds and are not pledged to the payment of the Bonds or the interest thereon.

(B) If and to the extent necessary to comply with any covenant established in a Series Resolution authorizing a Series of Bonds or in a Series Certificate relating to such Series of Bonds regarding maintaining the exclusion of interest on Tax-exempt Bonds from gross income



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for Federal income taxation purposes, the City and County may establish a subaccount in the Rebate Subaccount with respect to such Series of Bonds or provide for the establishment of such subaccount in such Series Resolution or in such Series Certificate.

Section 6.08. Wastewater General Account. (A) Subject to application of moneys on credit to the Wastewater General Account as provided in subsection (A) of Section 6.08 of the **First Bond Resolution**, the City and County shall transfer from the Wastewater General Account: (i) to the Debt Service Subaccount, the Common Reserve Subaccount and each Separate Series Reserve Subaccount the amount necessary (or all the moneys in the Wastewater General Account if less than the amount necessary) to satisfy any deficiencies in payments to such Subaccounts required by Section 6.03; (ii) in the event of any transfer of moneys from the Common Reserve Subaccount or any Separate Series Reserve Subaccount to the Debt Service Subaccount, to the Common Reserve Subaccount or such Separate Series Reserve Subaccount the amount of any resulting deficiency in such Subaccount; (iii) *provided* that all transfers referred to in clauses (i) and (ii) of this subsection (A) shall have heretofore been made, to the Renewal and Replacement Account the amount, if any, necessary to satisfy the deficiency in such Fund; (iv) such amount as the City and County may, in its discretion, determine to set aside in reserve for meeting the deficiencies referred to in clauses (i) through (iii) of this subsection (A); (v) *provided* that all transfers and reserves therefor referred to in clauses (i) through (iv) of this subsection (A) shall have heretofore been made, to the Third Lien Obligation Subaccount the amount, if any, necessary to satisfy any deficiency in meeting the Third Lien Obligation Requirement; and (vi) *provided* that all transfers and reserves therefor referred to in clauses (i) through (v) of this subsection (A) shall have heretofore been made, to the Reimbursable Obligation Account, the amount, if any, necessary to eliminate any deficiency in meeting the Reimbursable Obligation Requirement.

(B) As provided in the First Bond Resolution, amounts in the Wastewater General Account not required to meet a deficiency referred to in subsection (A) of Section 6.08 of the **First Bond Resolution** or subsection (A) of this Section 6.08 shall be applied to any of the following purposes:

- (1) the Costs of Improvements, or the provision of one or more reserves therefor;
- (2) for transfer to the Rate Stabilization Account in the Sewer Fund such amounts as may be provided in the Annual Budget for the purpose of stabilizing rates and charges;
- (3) the purchase at such price or prices as the City and County may deem advisable or redemption of any Bonds and expenses of such purchase or redemption at any time; or



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- (4) for any other lawful purpose of the City and County.

Section 6.09. Rate Stabilization Account. As provided in the First Bond Resolution, the amount of moneys and Investment Securities to be maintained from time to time in the Rate Stabilization Account shall be provided for in the Annual Budget. As provided in the First Bond Resolution, moneys and Investment Securities may be transferred to the Rate Stabilization Account as provided in the Annual Budget from (i) the Sewer Fund in accordance with paragraph (7) of subsection (B) of Section 6.02(B), or (ii) the Wastewater General Account as provided in Section 6.08. Moneys and Investment Securities credited to the Rate Stabilization Account shall be transferred to the Sewer Fund at the times and in the amounts as may be provided in the Annual Budget for the purposes of stabilizing the rates and charges of the Wastewater System.

Section 6.10. Improvement Second Account. (A) As soon as practicable on the date of delivery of the Bonds of a Series, there shall be deposited in the Improvement Fund for credit to the Improvement Second Account the amount required to be deposited therein pursuant to the Series Resolution or Series Certificate. In addition, the City and County shall deposit in the Improvement Fund for credit to the Improvement Second Account such moneys other than proceeds of the Bonds as the City and County shall determine to be proper or appropriate to pay the Costs of Improvements.

(B) The Series Resolution authorizing the issuance of any Series of Bonds (exclusive of Refunding Bonds) may create and establish one or more separate special series improvement subaccounts (a "Series Improvement Second Subaccount") in the Improvement Second Account, with such designation as may be appropriate. In the event any interest on such Bonds is to be capitalized from the proceeds of such Bonds, there shall be created in the Improvement Second Account a special series subaccount (a "Series Improvement Second Interest Subaccount") with such designation as may be appropriate.

(C) Moneys, including proceeds of the Bonds of a Series, which are credited to a Series Improvement Second Subaccount shall be applied to the payment of the Costs as shall be specified in the applicable Series Resolution or Series Certificate. Any balance remaining in such Series Improvement Second Subaccount upon completion of payment of such Costs may be used for any lawful purpose of the City and County; *provided* that the City and County shall have obtained an Opinion of Counsel that any such application will not impair the exemption from Federal income taxation of interest on any of the Tax-exempt Bonds.

(D) Moneys credited to a Series Improvement Interest Second Subaccount shall be used for the purpose of paying interest on the Bonds of designated Series. On or before the fifth (5th) day preceding the end of the month next preceding the maturity of an installment of interest



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on the Bonds for the payment of which moneys have been credited to a Series Improvement Second Interest Subaccount, the City and County shall transfer from a Series Improvement Second Interest Subaccount for credit to the Debt Service Subaccount an amount which, together with any moneys theretofore held in the Debt Service Subaccount, shall be sufficient to pay such next maturing installment of interest on such Bonds.

(E) Payments from the Improvement Second Account shall be as specified in the Series Resolution authorizing the issuance of a Series of Bonds or a Series Certificate relating to a Series of Bonds or a Series Certificate relating to a Series of Bonds.

(F) Moneys, including proceeds of the Bonds, in the Improvement Second Account, pending their application as provided in the Resolution and Series Resolution and Series Certificate, shall be subject to a prior and paramount lien and charge in favor of the Holders of the Bonds, and the Holders of the Bonds shall have a valid claim on such moneys for the further security of the Bonds until paid out or transferred as herein provided. In the event that there is an insufficiency in the Debt Service Subaccount to pay Debt Service after all transfers, other than a transfer from the Wastewater System Facility Charge Fund, have been made pursuant to and in accordance with Article VI, the City and County shall transfer from the Improvement Second Account such amount (or all remaining amounts in such Improvement Second Account) as is deemed necessary by the Director of Budget and Fiscal Services for deposit in the Debt Service Subaccount, which, together with the amounts then on credit to the Debt Service Subaccount, is sufficient to pay Debt Service.

Section 6.11. Wastewater System Facility Charge Account. (A) Subject to the lien and charge provided in the First Bond Resolution, amounts in the Wastewater System Facility Charge Account and any subaccount therein, pending their application, shall be subject to a prior and paramount lien and charge in favor of the Holders of the Bonds, and the Holders of the Bonds shall have a valid claim on such moneys for the further security of the Bonds until paid out or transferred as herein provided. In the event that there is an insufficiency in the Debt Service Subaccount to pay Debt Service after all transfers have been made pursuant to and in accordance with Article VI of the First Bond Resolution and Article VI, the City and County shall transfer from the Wastewater System Facility Charge Account such amount (or all remaining amounts in the Wastewater System Facility Charge Account) as is deemed necessary by the Director of Budget and Fiscal Services for deposit in the Debt Service Subaccount, which, together with the amounts then on deposit in the Debt Service Subaccount, is sufficient to pay Debt Service. The amount of any such transfer shall at the earliest practicable date be reimbursed to the Wastewater System Facility Charge Account from the first available Revenues other than Revenues derived from the Wastewater System Facility Charge.

(B) Amounts held in the Wastewater System Facility Charge Account shall be expended for the purposes specified in Section 6-47.1 of the City Code.



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Section 6.12. *Investment of Funds.* (A) Moneys in the Debt Service Subaccount shall, to the fullest extent practicable and reasonable, be invested and reinvested solely in noncallable Investment Securities which are Government Obligations, FNMA's or FHLMC's (as such terms are defined in the definition of Investment Securities in **Section 1.01**) and which shall mature or be subject to redemption at the option of the holder thereof on or prior to the respective dates when the moneys in the Debt Service Subaccount will be required for the purposes intended. Moneys in the Common Reserve Subaccount or any Separate Series Reserve Subaccount not required for immediate disbursement for the purpose for which the Common Reserve Subaccount or such Separate Series Reserve Subaccount is created shall, to the fullest extent practicable and reasonable, be invested and reinvested solely in, and obligations credited to the Common Reserve Subaccount or such Separate Series Reserve Subaccount shall be, investments specified in items (i) to (vi), inclusive, of the definition of Investment Securities contained in **Section 1.01** and which shall mature or be available at par at or prior to five (5) years from the date of investment thereof.

(B) As provided in the First Bond Resolution, moneys in the Sewer Fund not required for immediate disbursement for the purpose for which such Fund is created shall, to the fullest extent practicable and reasonable, be invested and reinvested to the extent allowed by law, solely in, and obligations deposited in such Fund shall be, Investment Securities which shall mature or be subject to redemption or payment at the option of the holder thereof, not later than such times as shall be necessary to provide moneys when needed to provide payments from such Fund.

(C) Moneys in the Improvement Second Account, other than a Series Improvement Second Interest Subaccount therein, not required for immediate disbursement for the purposes for which said Account is created shall, to the fullest extent practicable and reasonable, be invested and reinvested to the extent allowed by law, solely in, and obligations deposited in such Account shall be, Investment Securities which shall mature or be subject to redemption or payment at par at the option of the holder thereof not later than such times as shall be necessary to provide moneys when needed to provide payments from such Account.

(D) Moneys in a Series Improvement Second Interest Subaccount in the Improvement Second Account not required for immediate disbursement for the purposes for which such Account is created shall, to the fullest extent practicable and reasonable, be invested and reinvested to the extent allowed by law, solely in, and obligations deposited in such Account shall be, noncallable Investment Securities which are Government Obligations, FNMA's or FHLMC's (as such terms are defined in the definition of Investment Securities in **Section 1.01**) shall mature or be subject to redemption at the option of the holder thereof not later than such times as shall be necessary to provide moneys when needed to provide payments from such Account.

(E) As provided in the First Bond Resolution, to the extent permitted in the Resolution, all income received from the investment or reinvestment of moneys in the Funds,



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Accounts and Subaccounts established hereunder shall be deposited in the respective Fund, Account and Subaccount from which such investments are made and applied as a credit against the next succeeding deposit or credit required to be made pursuant to Section 6.02 ; *provided, however, that, except as to the Third Lien Obligation Subaccount and Subaccount and the Reimbursable Obligation Account, all or a portion of the income received from the investment or reinvestment of moneys in any such Fund, Account and Subaccount may be deposited in the Sewer Fund or the Improvement Second Account, including a Series Improvement Second Interest Subaccount therein; and provided, further, however, that all income received from the investment or reinvestment of moneys in any Series Improvement Second Interest Subaccount shall be credited to the Debt Service Subaccount.*

(F) Nothing in the Resolution shall prevent any Investment Securities acquired as investments of funds held under the Resolution from being issued or held in book-entry form.

(G) Neither the Director of Budget and Fiscal Services nor any Paying Agent shall be liable for any depreciation in value of any investments made by the City and County.

Section 6.13. Valuation and Sale of Investment Securities. (A) Investment Securities in any Fund, Account or Subaccount created under the provisions of the Resolution shall be deemed at all times to be part of such Fund, Account or Subaccount, and any profit realized from the liquidation of such investment shall be credited to such Fund, Account and any loss resulting from liquidation of such investment shall be charged to such Fund, Account or Subaccount. Any net profits remaining after accumulating the sum of all profits realized and losses suffered from the liquidation of such investments in any Fund, Account or Subaccount during each semiannual period ending January 1 and July 1 shall be transferred or paid as provided in subsection (E) of Section 6.12.

(B) In computing the amount in any Fund, Account or Subaccount, Investment Securities therein shall be valued at cost or accreted value, whichever is lower, exclusive of accrued interest. The City and County shall determine the value of Investment Securities held in any Fund, Account or Subaccount as frequently as it deems necessary, but not less often than annually.

(C) Except as otherwise provided in the Resolution, any Depositary shall use its best efforts to sell at the best price obtainable, or present for redemption, any Investment Securities held in any Fund, Account or Subaccount whenever it shall be necessary, and upon oral request (later confirmed in writing) from an Authorized Officer in order to provide moneys to meet any payment or transfer from such Fund, Account or Subaccount. No Depositary shall be liable or responsible for any loss resulting from any such investment, sale, liquidation or presentation for investment made in the manner provided above.



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Section 6.14. *Depositories.* (A) All moneys deposited under the provisions of the Resolution with the City and County or any Depositary shall be held in trust and applied only in accordance with the provisions of the Resolution, and each of the Funds, Accounts and Subaccounts established by the Resolution shall be a trust fund.

(B) Each Depositary shall be a bank or trust company organized under the laws of any state of the United States of America or a national banking association having capital stock, surplus and undivided earnings of \$5,000,000 or more and willing and able to accept such office on reasonable and customary terms and authorized by law to act in accordance with the provisions of the Resolution.



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ARTICLE VII

CONCERNING THE PAYING AGENTS AND DEPOSITORIES

Section 7.01. *Appointment of Depositories; Acceptance of Duties.* The Director of Budget and Fiscal Services may appoint one or more Paying Agents and Depositories as of the date of issuance and delivery of the first Series of Bonds and may at any time or from time to time appoint one or more other Paying Agents or other Depositories having the qualifications set forth in **Section 6.14**; *provided* that notwithstanding **Section 6.14**, the Director of Budget and Fiscal Services may be designated Paying Agent and/or Depository. Each Paying Agent, other than the Director of Budget and Fiscal Services, and each Depository, other than the Director of Budget and Fiscal Services, shall signify its acceptance of the duties and obligations imposed upon it by the Resolution by executing and delivering to the City and County and the Director of Budget and Fiscal Services a written acceptance thereof.

Section 7.02. *Statement by Paying Agents and Depositories Hereunder of Funds, Accounts and Subaccounts and Other Matters.* Not more than sixty (60) days after the close of each Fiscal Year, each Paying Agent and Depository appointed hereunder shall furnish the City and County, a statement setting forth (to the extent applicable) in respect to such Fiscal Year: (i) all transactions relating to the receipt, disbursement, and application of all moneys received by such Paying Agent or Depository pursuant to the terms of the Resolution; (ii) the amount held by such Paying Agent or Depository at the end of such Fiscal Year on deposit in or to the credit of each Fund, Account and Subaccounts provided for in the Resolution and the value of Investment Securities therein; (iii) a brief description of all obligations held by such Paying Agent or Depository as an investment of moneys in any Fund, Account and Subaccounts hereunder as of the end of such Fiscal Year; (iv) the principal amount of Bonds purchased by such Paying Agent or Depository during such Fiscal Year from moneys available therefor in any Fund, Account and Subaccounts pursuant to the provisions of the Resolution and the respective purchase price of such Bonds; (v) in the case of the Depository, the principal amount of Bonds redeemed or retired during such Fiscal Year and the Redemption Prices thereof, if any; and (vi) any other information which the City and County may reasonably request.

Section 7.03. *Paying Agents or Depositories Hereunder Not Liable for Acts of the City and County or Other Paying Agents or Depositories; No Representations by Paying Agent or Depository.* No Paying Agent or Depository hereunder shall be responsible or have any liability for any act of the City and County or of any other Paying Agent or Depository. No Paying Agent or Depository hereunder shall be responsible in any manner whatsoever for the correctness of the

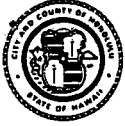


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recitals, statements and representations in the Resolution or in the Bonds, all of which are made by the City and County solely. No Paying Agent or Depositary hereunder makes any representation as to the validity of the Resolution or of the Bonds issued hereunder, and no Paying Agent or Depositary hereunder shall incur any liability or responsibility in respect of any such matters.

Section 7.04. *Paying Agents and Depositories May Buy, Hold, Sell or Deal in Bonds and Other Indebtedness of the City and County.* Each Paying Agent and each Depositary and its respective directors, officers, employees or agents, may in good faith buy, sell, own, hold and deal in any of the Bonds or coupons, if any, issued under the provisions of the Resolution and may join any action which any Holder of a Bond may be entitled to take, with like effect as if such Paying Agent or Depositary were not a Paying Agent or any Depositary, as the case may be, under the Resolution. Any Paying Agent or any Depositary may in good faith hold any other form of indebtedness of the City and County; own, accept or negotiate any drafts, bills of exchange, acceptances or obligations of the City and County, and make disbursements for the City and County and enter into any commercial or business arrangement therewith.

Section 7.05. *Reimbursement of Paying Agents and Depositories for Fees, Expenses and Charges.* Each Paying Agent and each Depositary shall also be entitled to reasonable fees and to reimbursement by the City and County for all expenses and charges reasonably incurred by it in the performance of its duties hereunder. No Paying Agent nor Depositary shall have a lien for such fees and reimbursement on the moneys pledged to secure the Bonds hereunder at any time held by it hereunder, prior to the lien or claim of the Holders of the Bonds on all such moneys.



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ARTICLE VIII

COVENANTS TO SECURE BONDS

The City and County hereby covenants and agrees with the Holders of all Bonds issued pursuant to the Resolution, and to the extent provided in a Series Resolution or Series Certificate, all Support Facility Providers, as follows:

Section 8.01. *Maintenance of the Properties of the Wastewater System; Keeping the Wastewater System in Good Repair.* The Department shall: (i) maintain, preserve and keep, or cause to be maintained, preserved and kept, the properties of the Wastewater System and all additions and betterments thereto and extensions thereof, and every part and parcel thereof in good repair, working order and condition; (ii) from time to time make, or cause to be made, all necessary and proper repairs, renewals, replacements, additions, extensions and betterments thereto, so that at all times the business carried on in connection therewith shall be properly and advantageously conducted; and (iii) comply, or cause to be complied with the terms and conditions of any permit or license for the Wastewater System or any part thereof issued by any Federal or State governmental agency or body and with any Federal or State law or regulation applicable to the construction, operation, maintenance and repair of the Wastewater System or requiring a license, permit or approval therefor.

Section 8.02. *Rates and Charges.* (A) The City and County shall fix, charge and collect such rates and other charges as shall be required in order that in each Fiscal Year the Net Revenues shall be not less than the Net Revenue Requirement for such Fiscal Year. The failure in any Fiscal Year to comply with the foregoing rate covenant in this subsection (A) shall not constitute an Event of Default if the City and County shall comply with subsection (B) of this Section 8.02.

(B) Prior to the end of each Fiscal Year the Director of Environmental Services or the Director of Budget and Fiscal Services if requested by the Director of Environmental Services shall complete a review of the financial condition of the Department for the purpose of estimating whether the Net Revenues for such Fiscal Year and for the next succeeding Fiscal Year will be sufficient to comply with the rate covenant in subsection (A) of this Section 8.02 and shall by a Written Certificate of the City and County make a determination with respect thereto. Such review shall take into consideration the completion of any uncompleted Improvement and the issuance of future Series of Bonds if necessary to finance the completion of such Improvements. Such Written Certificate shall set forth a reasonably detailed statement of the actual and estimated Revenues, Operation and Maintenance Expenses, Aggregate Debt Service, and any other estimates or assumptions upon which such determination was based, and



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shall be filed with the City Clerk on or before July 1 in each year. If it is determined in such Written Certificate that the Revenues may not be so sufficient, the Director of Environmental Services or the Director of Budget and Fiscal Services if requested by the Director of Environmental Services shall forthwith make a study for the purpose of determining a schedule of fees, rates and charges which, in the opinion of the Director of Environmental Services or the Director of Budget and Fiscal Services, will cause sufficient Revenues to be collected in the following Fiscal Year to comply with such rate covenant in subsection (A) of this **Section 8.02** and will cause additional Revenues to be collected in such following and later Fiscal Years sufficient to eliminate the amount of any deficiency at the earliest practicable time, or the Director of Environmental Services or the Director of Budget and Fiscal Services may elect to cause the Consulting Engineer to make such a study and render such opinion. The City Council shall as promptly as practicable but no later than the one hundred twenty (120) days following such determination by the Director of Environmental Services or the Director of Budget and Fiscal Services, or receipt of the Consulting Engineer's recommendation, adopt and place in effect a schedule of fees, rates and charges as so determined or recommended pursuant to this **Section 8.02**.

Section 8.03. *Sale, Lease or Other Disposition of Properties of the Wastewater System.*
The properties of the Wastewater System shall not be sold, mortgaged, leased or otherwise disposed of except as provided in this Section.

(1) The properties of the Wastewater System may be sold, leased, or otherwise disposed of in their entirety if, simultaneously with such sale, lease or other disposition thereof, provision is made for the payment of all Bonds then Outstanding and such Bonds are no longer deemed Outstanding within the meaning of **Section 12.01**.

(2) Any portion of the properties of the Wastewater System may be sold, leased, or otherwise disposed of on such terms and conditions as may be determined by the City and County if the value of such portion of the properties as of the date of such sale, lease or disposition does not exceed five percent (5%) of the net book assets of the Wastewater System as of the last day of the preceding Fiscal Year as shown in the most recent audited financial statements of the Department. Any part of the properties of the Wastewater System having a value as of the date of the sale, lease or disposition which exceeds five percent (5%) of the net book assets of the Wastewater System as of the last day of the preceding Fiscal Year as shown in the most recent audited financial statements of the Department may be sold, leased, or otherwise disposed of if the Consulting Engineer shall certify to the City and County in writing that the terms and conditions of the proposed sale, lease or other disposition of any such properties are fair and reasonable, and that the estimated Revenues to be derived from the remaining properties of the Wastewater System, after taking into consideration the use by the Department of the proceeds of such proposed sale, lease or other disposition of such properties, will be



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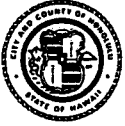
sufficient to enable the City and County to comply with all covenants and conditions of the Resolution. Proceeds of any sale, lease or other disposition of any portion of the properties of the Wastewater System pursuant to this paragraph shall be paid first into the Debt Service Account created by the First Bond Resolution and applied to the purchase or redemption of bonds thereunder, second into the Debt Service Subaccount and applied to the purchase or redemption of Bonds, and third into the Sewer Fund and applied by the City and County for the purpose of constructing extensions, betterments or improvements to the Wastewater System as the City and County shall determine.

(3) Surplus lands, crops, timber, buildings and any other portion of the works, plant and facilities of the Wastewater System and real and personal property comprising a part thereof, which, in the opinion of the Director of Environmental Services, shall have become unserviceable, inadequate, obsolete, worn out, or unfit to be used in the operation of the Wastewater System, or no longer necessary, material to, or useful in such operation may be sold, leased, or otherwise disposed of. Proceeds of any such sale, lease or other disposition of any portion of the properties of the Wastewater System pursuant to this paragraph shall be paid into the Sewer Fund.

(4) If permitted by the laws of the State, the City and County may transfer without consideration the properties comprising the Wastewater System to a public corporation or political subdivision of the State, *provided* such corporation or subdivision assumes all of the City and County's or the Department's obligations and duties hereunder.

(5) In the event that any part of the properties of the Wastewater System shall be transferred from the City and County through the operation of law (including condemnation), any moneys received by the City and County as a result thereof shall be paid: (i) if such proceeds are not in excess of \$250,000, into the Sewer Fund; or (ii) if such proceeds are in excess of \$250,000: (a) into the Debt Service Account created by the First Bond Resolution and applied to the purchase or redemption of bonds issued thereunder; (b) in the Debt Service Subaccount and applied to the purchase or redemption of Bonds; or (c) into the Renewal and Replacement Account and applied by the City and County for the purpose of constructing replacements, extensions, betterments or improvements to the Wastewater System, as the City and County shall determine.

Section 8.04. Insurance. (A) Except as provided in subsection (C) of this Section 8.04, the Department shall keep, or cause to be kept, the works, plants and facilities comprising the properties of the Wastewater System and the operations thereof insured to the extent available at reasonable cost with responsible insurers, with policies payable to the City and County or the Department, against risks of direct physical loss, damage to or destruction of the above-ground structures, and the equipment and contents therein, of the Wastewater System arising from



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accidents, casualties or negligence, and other causes customarily insured against, at least to the extent that similar insurance is usually carried by utilities operating like properties, including liability insurance and workman's compensation insurance; *provided, however*, that any time while any contractor engaged in constructing any part of the Wastewater System shall be fully responsible therefor, the Department shall not be required to keep such part of the Wastewater System insured. All policies of insurance shall be for the benefit of the Holders of the Bonds and the City and County or the Department as their respective interests may appear.

(B) In the event of any loss or damage to the properties of the Wastewater System covered by insurance, the Department will: (i) with respect to each such loss, promptly repair and reconstruct to the extent necessary to the proper conduct of the operations of the Wastewater System the lost or damaged portion thereof and shall apply the proceeds of any insurance policy or policies covering such loss or damage for that purpose to the extent required therefor, unless, in case of loss or damage involving \$250,000 or more, the Department shall determine that such repair and reconstruction not be undertaken; and (ii) if the Department shall not use the entire proceeds of such insurance to repair or reconstruct such lost or damaged property, the proceeds of such insurance policy or policies or any portion thereof not used for such repair or reconstruction, as the case may be, shall be paid into the Sewer Fund.

(C) If the Department does not obtain insurance from responsible insurers as in subsection (A) of this Section 8.04 provided, the City and County or the Department shall self-insure; *provided, however*, that if the Department fails to carry insurance against any of the risks normally insured against by operators of facilities similar to the Wastewater System, it must secure the concurrence of an independent insurance consultant. In making its decision whether to concur in such self-insurance, the independent insurance consultant shall: (i) make an estimate of the added financial risks, if any, assumed by the Department as a result of the self-insurance; (ii) consider the availability of commercial insurance, the terms upon which such insurance is available and the costs of such available insurance, and the effect of such terms and costs upon the Department's costs and charges for its services; and (iii) determine whether the added financial risk, if any, being assumed by the Department is prudent in light of the savings to be realized from such self-insurance or in light of the general availability of insurance.

(D) Nothing contained herein shall prohibit or be deemed to prohibit the Department from including insurance required by this Section 8.04 from being maintained as part of a blanket insurance policy of the City and County.

Section 8.05. Consulting Engineer. The City Council, the Director of Environmental Services or the Director of Budget and Fiscal Services may from time to time retain and appoint, as Consulting Engineer, an independent consulting engineer or engineering firm or corporation having special skill, knowledge and experience in analyzing the operations of wastewater systems, preparing rate analyses, forecasting the loads and revenues of wastewater systems, preparing feasibility reports respecting the financing of wastewater systems and advising on the



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operation of wastewater facilities, who shall be available to advise the Department, upon request, and to make such investigations and determinations as may be necessary from time to time under the provisions of the Resolution.

Section 8.06. *Books of Account; Annual Audit.* The Department shall maintain and keep proper books of account relating to the Wastewater System and in accordance with generally accepted accounting principles. Within one hundred eighty (180) days after the end of each Fiscal Year commencing with the Fiscal Year ending June 30, 2000, the Department shall cause such books of account to be audited by an independent certified public accountant. The audit required by this Section may be part of a comprehensive audit of the City and County, *provided* that the Wastewater System in such audit is treated as an "enterprise fund" and the revenues and expenses of the Wastewater System are stated in a manner which permits identification by category of the sources and uses of the Revenues. A copy of each audit report shall be prepared in conformity with generally accepted accounting principles and shall be filed promptly with the City Council and sent to any Bondholder filing with the Director of Environmental Services a written request for a copy thereof and to any Rating Agency which has rated any Bonds.

Section 8.07. *Punctual Payment of Bonds.* The City and County shall duly and punctually pay, or cause to be paid, but only from the Revenues, income and other funds herein specified, the principal and Redemption Price (if any) of, and interest on, each and every Bond on the dates and at the places, and in the manner provided in the Bonds according to the true intent and meaning thereof, and the City and County shall faithfully do and perform and at all times fully observe and keep any and all of its covenants, undertakings, stipulations and provisions contained in the Bonds and in the Resolution.

Section 8.08. *Payment of Taxes and Other Claims.* The Department shall from time to time duly pay and discharge, or cause to be paid and discharged, all taxes, assessments and other governmental charges, or payments in lieu thereof, lawfully imposed upon the properties of the Wastewater System (or any part thereof) or upon the Net Revenues or income received therefrom when the same shall become due, as well as all lawful claims for labor, material and supplies, which, if not paid, might become a lien or charge upon said properties or any part thereof, or upon the Revenues derived from the ownership or operation of the Wastewater System, or which might in any way impair the security of the Bonds, except any such assessments, charges or claims which the Department shall in good faith contest as to validity.

Section 8.09. *Extension of Payment of Bonds and Coupons, if any.* The City and County will not, directly or indirectly, extend or assent to the extension of the maturity of any of the Bonds or the time of payment of any claims for interest by the purchase of such Bonds,



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coupons, if any, or claims for interest or by any other arrangement and in case the maturity of any of the Bonds or the time for payment of any such claims for interest shall be extended, such Bonds or claims for interest shall not be entitled, in case of any default under the Resolution, to the benefit of the Resolution or to any payment out of any assets of the City and County or the funds (except funds held in trust for the payment of particular Bonds or claims for interest pursuant to the Resolution) held by the Paying Agents, except subject to the prior payment of the principal of all Bonds issued and Outstanding the maturity of which has not been extended and of such portion of the accrued interest on the Bonds as shall not be represented by such extended claims for interest. Nothing herein shall be deemed to limit the right of the City and County to issue Refunding Bonds as provided in the Resolution and such issuance shall not be deemed to constitute an extension of maturity of Bonds.

Section 8.10. *Sound Improvements and Extensions.* The Department shall not expend any of the income, revenues, receipts, profits and other moneys derived by it from the ownership or operation of the Wastewater System for any renewals, replacements, additions, betterments and improvements to, or extensions of, the Wastewater System which, in the sole opinion of the Director of Environmental Services, will not properly and advantageously contribute to the conduct of the business of the Wastewater System in an efficient and economical manner unless required to do so to permit the continued operation of the Wastewater System or to preserve or protect the Wastewater System.

Section 8.11. *Further Assurances.* The City and County and the Department shall, at any and all times, insofar as it may be authorized so to do, pass, make, do, execute, acknowledge and deliver all and every such further resolutions, indentures, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning and confirming any and all of the rights, Revenues and other funds hereby pledged or charged with or assigned to the payment of the Bonds or intended so to be, or which the City and County or the Department may hereafter become bound to pledge or charge or assign.

Section 8.12. *Protection of Security.* The City and County is duly authorized under all applicable law to create and issue the Bonds, to adopt the Resolution and to pledge the Revenues and other moneys, securities and funds purported to be pledged by the Resolution in the manner and to the extent provided in the Resolution. The Revenues and other moneys, securities and funds so pledged are and will be free and clear of any pledge, lien, charge or encumbrance thereon or with respect thereto prior to, or of equal rank with, the pledge created by the Resolution, except as otherwise expressly provided herein, and all action on the part of the City and County to that end has been duly and validly taken. The Bonds are and will be valid and legally enforceable obligations of the City and County in accordance with their terms and the



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terms of the Resolution. The City and County shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of the Revenues and other moneys, securities and funds pledged under the Resolution and all the rights of the Bondholders hereto against all claims and demands of all persons whomsoever.

Section 8.13. *Exclusion of Interest on Tax-exempt Bonds for Federal Income Taxation Purposes.* This section shall apply only to Tax-exempt Bonds.

In order to maintain the exclusion from gross income for purposes of federal income taxation of interest on the Tax-exempt Bonds of any Series, the City and County and the Department shall comply with the provisions of the Code applicable to such Bonds, including without limitation the provisions of the Code relating to the computation of the yield on investments of the Gross Proceeds of such Bonds, reporting of earnings on the Gross Proceeds of such Bonds, and rebates of Rebatable Amount to the United States Treasury Department. In furtherance of the foregoing, the City and County and the Department shall comply with the Tax Certificate relating to such Bonds or such instructions as may be delivered by Bond Counsel at the time such Bonds are issued as to compliance with the Code with respect to such Bonds, as such instructions may be amended from time to time, as a source of guidance for achieving compliance with the Code.

The City and County and the Department shall not take any action or fail to take any action with respect to the application and investment of Gross Proceeds of Tax-exempt Bonds or use, ownership or management of the Wastewater System or any facility or project thereof or any Improvement thereto which would cause a failure to comply with the provisions of Sections 103 and 141 to 150 of the Code, such covenant to be effective (i) throughout the term of such Bonds, and (ii) through the date that the final rebate, if any, must be made to the United States Treasury Department in accordance with Section 148 of the Code with respect to such Bonds.

Notwithstanding any other provision hereof to the contrary, the City and County's or the Department's failure to comply with the provisions of the Code applicable to the Tax-exempt Bonds of a Series shall not entitle the Holder of Bonds of any other Series, or any trustee acting on their behalf, to exercise any right or remedy provided to Holders of Bonds hereunder based upon the City and County's or the Department's failure to comply with the provisions of this Section or of the Code.

Section 8.14. *Annual Budget.* (A) Not later than May 31 before the beginning of any Fiscal Year, the City and County or the Department shall prepare a preliminary budget of Operation and Maintenance Expenses of the Wastewater System and reserves therefor for the ensuing Fiscal Year. Each such budget and each Annual Budget shall include, in addition to provision for all anticipated Operation and Maintenance Expenses, provision for the payments



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required to be made to the Renewal and Replacement Account, *provided* that such payments shall, in the aggregate, at least equal the amount required by subsection (D) of this Section. Such preliminary budget and any Annual Budget may set forth such additional material as the City and County or the Department may determine.

(B) Except as provided in subsection (D), on or before the fifteenth (15th) day of each such Fiscal Year, the City and County shall finally adopt the Annual Budget for such year. The City and County may at any time adopt an amended Annual Budget for the remainder of the then current Fiscal Year. Copies of the Annual Budget and of any amended Annual Budget shall be made available for inspection by Bondholders and shall be sent to each Rating Agency.

(C) If for any reason the City and County shall not have adopted the Annual Budget before the fifteenth (15th) day of any Fiscal Year, the budget for the preceding Fiscal Year shall be deemed to be in effect for such Fiscal Year until the Annual Budget for such Fiscal Year is adopted. For any purpose of computation under the provisions of the Resolution, the budget for the preceding year shall be deemed to have been adopted for any Fiscal Year until the Annual Budget for such year shall be adopted.

(D) Every preliminary budget, Annual Budget and amended Annual Budget shall: (i) set forth in reasonable detail amounts required for repair, replacement or reconstruction of the Wastewater System and major or extraordinary repairs, renewals or replacements of the Wastewater System, if any, for the period to be covered by such budget; (ii) specify the amounts to be deposited in the Renewal and Replacement Account, the Subordinate Obligation Account (including the Third Lien Obligation Subaccount therein), the Reimbursable Obligation Account and the Wastewater General Account, and the amounts to be maintained in the Sewer Fund for working capital and operating reserves and in the Rate Stabilization Account for rate stabilization purposes, if any, for such purposes for such period, (iii) specify the amounts to be transferred from the Wastewater General Account to the Rate Stabilization Account and to other Funds, Accounts and Subaccounts; and (iv) project the amounts required for such purposes for the next five Fiscal Years in such format as the Director of Environmental Services shall determine. A copy of each such report shall be filed and maintained in the records of the City and County.



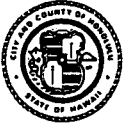
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ARTICLE IX

DEFAULTS; REMEDIES; BONDHOLDERS' COMMITTEE

Section 9.01. *Events of Default.* Each of the following events is hereby defined as and declared to be and shall constitute an "Event of Default":

- (a) if payment of the principal and Redemption Price (if any) of any Bond, shall not punctually be made when due and payable, whether at the stated maturity thereof or upon proceedings for the redemption thereof (whether by voluntary redemption or a mandatory sinking fund redemption or otherwise);
- (b) if payment of the interest on any Bond shall not punctually be made when due;
- (c) if the provisions of any Series Resolution with respect to mandatory Sinking Fund Installment payments or the redemption of Term Bonds therefrom, as the case may be, shall not punctually be complied with at the time and in the manner specified in such Series Resolution;
- (d) if the City and County or the Department shall fail to duly and punctually perform or observe any other of the covenants, agreements or conditions contained in the Resolution or in the Bonds, on the part of the City and County or the Department to be performed, and such failure shall continue for ninety (90) days after written notice thereof from the Holders of not less than twenty percent (20%) of the Bonds then Outstanding; *provided*, that if such failure shall be such that it cannot be corrected within such ninety (90) day period, it shall not constitute an Event of Default if corrective action is instituted within such period and diligently pursued until the failure is corrected;
- (e) if the City and County shall: (i) admit in writing its inability to pay its debts generally as they become due; or (ii) file a petition in bankruptcy or seeking a composition of indebtedness under the provisions of any Federal or state bankruptcy or similar law; or (iii) make an assignment for the benefit of its creditors; or (iv) file a petition or any answer seeking relief under the provisions of any Federal or state bankruptcy or similar law; or (v) consent to the appointment of a receiver of the whole or any substantial part of the Wastewater System; or (vi) consent to the assumption by any court of competent jurisdiction under the provisions of any other law for the relief or aid of debtors of custody or control of the City and County or the Department, or of the whole or any substantial part of the Wastewater System; and



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- (f) if a default shall occur under the First Bond Resolution.

Section 9.02. Notice to Bondholders of Event of Default. Immediately after the occurrence of an Event of Default as defined in items (a) through (c) of **Section 9.01**, or within thirty (30) days after any Paying Agent knows of any other Event of Default, the Paying Agent or Paying Agents shall give notice of all such Events of Default to the Bondholders, all other Paying Agents and Support Facility Providers, and each Rating Agency, in the manner provided in **Section 13.04**, unless such Events of Default shall have been cured before the giving of such notice.

Section 9.03. Acceleration of Bonds. If an Event of Default shall happen and shall not have been remedied, then and in every such case the Holders of not less than twenty-five percent (25%) in principal amount of the Bonds then Outstanding, by notice in writing to the City and County and the Director of Budget and Fiscal Services, may declare the principal of all the Bonds then Outstanding, and the interest accrued thereon, to be due and payable immediately, and upon any such declaration the same shall become and be immediately due and payable. The right of the Holders of not less than twenty-five percent (25%) in principal amount of the Bonds then Outstanding to make any such declaration, however, shall be subject to the condition that if, at any time after such declaration, but before the Bonds shall have matured by their terms, all overdue installments of interest upon the Bonds, together with interest on such overdue installments of interest to the extent permitted by law and all other sums then payable by the City and County under the Resolution (except the principal of, and interest accrued since the next preceding interest date on, the Bonds due and payable solely by virtue of such declaration) shall either be paid by or for the account of the City and County or provision satisfactory to the Holders of a majority in principal amount of the Bonds then Outstanding shall be made for such payment, and all defaults under the Bonds or under the Resolution (other than the payment of principal and interest due and payable solely by reason of such declaration) shall be cured or be secured to the satisfaction of the Holders of a majority in principal amount of the Bonds then Outstanding or provision deemed by such Holders of the Bonds to be adequate shall be made therefor, then and in every such case the Holders of a majority in principal amount of the Bonds then Outstanding, by written notice to the City and County, may rescind such declaration and annul such default in its entirety, but no such rescission shall extend to or affect any subsequent default or impair or exhaust any resulting right or power.

Section 9.04. Inspection of Books and Records; the City and County to Account as Trustee for Express Trust. (A) The City and County covenants that if an Event of Default shall have happened and shall not have been remedied, the books of record and account of the Department relating to the Wastewater System and all other records relating thereto shall at all



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times be subject to the inspection and use of the Holders of twenty-five percent (25%) in principal amount of the Bonds then Outstanding and of their respective agents and attorneys or of any committee therefor.

(B) The City and County covenants that if an Event of Default shall have happened and shall not have been remedied, the City and County will continue to account, as a trustee of an express trust, for all Revenues and other moneys, securities and funds pledged under the Resolution.

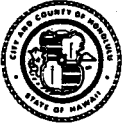
Section 9.05. Application of Revenues in an Event of Default. (A) During the continuance of an Event of Default as defined in items (a) through (c) of **Section 9.01** or of any other Event of Default as defined in **Section 9.01** resulting in an Event of Default as defined in items (a) through (c) of **Section 9.01**, the Revenues received by a receiver appointed pursuant to the provisions of the subsection (A) of **Section 9.06** as the result of the taking of possession of the business and properties of the Wastewater System, shall be applied by the receiver: first, to the payment of all necessary and proper Operation and Maintenance Expenses of the Wastewater System and all other proper disbursements or liabilities made or incurred by the receiver; second, to the then due and overdue payments into the Debt Service Subaccount, including the making up of deficiencies therein; and last, for any lawful purpose in connection with the Wastewater System.

(B) In the event that at any time the funds held by the receiver pursuant to the preceding subsection (A) shall be insufficient for the payment of the principal and Redemption Price (if any) of, and interest then due on, the Bonds, such funds (other than funds held for the payment or redemption of particular Bonds or coupons) and all Revenues of the Department and other of its moneys received or collected for the benefit or for the account of Holders of the Bonds by the receiver shall be applied as follows:

(1) Unless the principal of all of the Bonds shall have become due and payable,

First, to the payment of all necessary and proper Operation and Maintenance Expenses of the Wastewater System and all other proper disbursements or liabilities made or incurred by the receiver;

Second, to the payment to the persons entitled thereto of all installments of interest then due (including any interest on overdue principal) in the order of the maturity of such installments, earliest maturities first, and if the amounts available shall not be sufficient to pay in full any installment or installments of interest maturing on the same date, then to the payment thereof ratably, according to the



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amount due thereon, to the persons entitled thereto, without any discrimination or preference; and

Third, to the payment to the persons entitled thereto of the principal and premium, if any, due and unpaid upon the Bonds at the time of such payment without preference or priority of any Bond over any other Bonds, ratably, according to the amounts due respectively for principal and redemption premium, without any discrimination or preference.

(2) If the principal of all of the Bonds shall have become due and payable,

First, to the payment of all necessary and proper Operation and Maintenance Expenses of the Wastewater System and all other proper disbursements or liabilities made or incurred by the receiver;

Second, to the payment of the principal and interest then due and unpaid upon the Bonds without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bonds, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or preference.

(C) Whenever moneys are to be applied pursuant to the foregoing paragraphs, such moneys shall be applied by the receiver at such times, and from time to time, as it in its sole discretion shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future.

(D) If and whenever all overdue installments of interest on all Bonds, together with the reasonable and proper charges, expenses, and liabilities of the Holders of the Bonds, their respective agents and attorneys, and all other sums payable by the City and County under the Resolution including the principal and Redemption Price (if any) of all Bonds which shall then be payable, shall either be paid in full by or for the account of the City and County or provision satisfactory to the receiver shall be made for such payment, and all defaults under the Resolution or the Bonds shall be made good and secured to the satisfaction of the receiver or provision deemed by the receiver to be adequate therefor, the receiver shall pay over to the Department all of its moneys, securities, funds and Revenues then remaining unexpended in the hands of the Bondholders' Committee described in **Section 9.07** (except moneys, securities, funds or Revenues deposited or pledged, or required by the terms of the Resolution to be deposited or pledged, with the Director of Budget and Fiscal Services), control of the business and possession of the property of the Department shall be restored to the Department, and thereupon the City and County shall be restored to its former positions and rights under the Resolution, and all

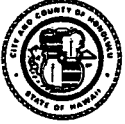


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Revenues shall thereafter be applied as provided in **Article VI**. No such payment over to the Department by the receiver or resumption of this application of Revenues as provided in **Article VI**, shall extend to or affect any subsequent default under the Resolution or impair any right consequent thereon.

Section 9.06. *Suits at Law or Equity and Mandamus; Appointment of a Receiver.* (A) If an Event of Default shall happen and shall not have been remedied, then and in every such case, but subject to the provisions, limitations and conditions of **Sections 9.04 and 9.05** hereof so far as the remedies provided in said Sections are concerned, the Holder of any Bond at the time Outstanding shall be entitled, for the equal benefit and protection of all Holders of the Bonds similarly situated, to proceed, protect and enforce the rights vested in such Holder by the Resolution by such appropriate judicial proceeding as such Holder shall deem most effectual to protect and enforce any such right, either by suit in equity or by action of law, whether for the specific performance of any covenant or agreement contained in the Resolution, or in aid of the exercise of any power granted in the Resolution, or to enforce any other legal or equitable right vested in the Holders of Bonds by the Resolution or by law; *provided, however*, that no judicial proceeding shall be brought seeking the appointment of a receiver to take possession of the Wastewater System or to manage, receive and apply the Revenues unless the Holders of not less than a majority in principal amount of the Bonds then Outstanding or a Bondholders' Committee representing the Holders of not less than a majority in principal amount of the Bonds then Outstanding shall have joined in or consented to such proceeding.

Section 9.07. *Bondholders' Committee.* If an Event of Default shall happen and shall not have been remedied, the Holders of not less than twenty-five percent (25%) in principal amount of the Bonds then Outstanding may call a meeting of the Holders of Bonds for the purpose of electing a Bondholders' Committee. Such meeting shall be called and proceedings thereat shall be conducted as provided for other meetings of Bondholders pursuant to **Section 11.02**. At such meeting the Holders of not less than a majority of the principal amount of the Bonds then Outstanding must be present in person or by proxy in order to constitute a quorum for the transaction of business, less than a quorum, however, having power to adjourn from time to time without any notice other than that required by **subsection (D) of said Section 11.02**. A quorum being present at such meeting, the Bondholders present in person or by proxy may, by the votes cast by the Holders of a majority in principal amount of the Bonds so present in person or by proxy, elect one or more persons who may or may not be Bondholders to the Bondholders' Committee which shall act as trustee for all Bondholders. The Bondholders present in person or by proxy at said meeting, or at any adjourned meeting thereof, shall prescribe the manner in which the successors of the persons elected to the Bondholders' Committee at such Bondholders' meeting shall be elected or appointed, and may prescribe rules and regulations governing the exercise by the Bondholders' Committee of the power conferred upon it herein, and may provide for the termination of the existence of the Bondholders' Committee.



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Section 9.08. Bondholders May Direct Proceedings. Anything contained in the Resolution to the contrary notwithstanding, the Holders of not less than a majority in principal amount of the Bonds at the time Outstanding shall be authorized and empowered (1) to direct the time, method, and place of conducting any proceeding for any remedy available to the Holders of the Bonds; or (2) on behalf of the Holders of the Bonds then Outstanding, to consent to the waiver of any Event of Default or its consequences. No waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon.

Section 9.09. Remedies Not Exclusive; Waivers of Default; Abandonment of Proceedings; Adverse Determination. (A) No remedy by the terms of the Resolution conferred upon or reserved to the Holders of the Bonds is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given hereunder to the Holders of the Bonds or now or hereafter existing at law or in equity or by statute.

(B) No delay or omission of any Holder of Bonds to exercise any right or power arising upon the occurrence of a default hereunder, including an Event of Default, shall impair any right or power or shall be construed to be a waiver of any such default or to be an acquiescence therein. Every power and remedy given by this Article to the Holders of Bonds may be exercised from time to time and as often as may be deemed expedient by such Holders.

(C) In case the Holders of the Bonds or a Bondholders' Committee formed pursuant to Section 9.07 shall have proceeded to enforce any right under the Resolution and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Holders of the Bonds or such Bondholders' Committee, then and in every such case the City and County and the Holders of the Bonds shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Holders of the Bonds shall continue as if no such proceedings had been taken.

Section 9.10. Remedies Subject to Rights of Holders of First Resolution Obligations. (A) In the event of any insolvency or bankruptcy proceedings, and any receivership, liquidation, reorganization or other similar proceedings in connection therewith, relative to the City and County or the Department, or to property of the City and County or the Department, and in the event of any proceedings for voluntary liquidation, dissolution or other winding up of the City and County or the department, the Holders of all First Resolution Obligations then outstanding shall be entitled to receive payment in full of all principal and interest on all such First Resolution Obligations before the holders of the Bonds are entitled to receive any payment from the trust estate under the First Bond Resolution consisting of the Net Revenues and funds held



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under the First Bond Resolution (hereinafter in this section referred to as the "Trust Estate") on account of principal (and premium, if any) or interest on the Bonds.

(B) In the event that any issue of Bonds is declared due and payable before its expressed maturity because of the occurrence of an event of default (under circumstances when the provisions of (A) above shall not be applicable), the Holders of all First Resolution Obligations outstanding at the time such Bonds so become due and payable because of such occurrence of such an event of default shall be entitled to receive payment in full of all principal and interest on all such First Resolution Obligations before the holders of the Bonds are entitled to receive any accelerated payment from the Trust Estate of principal (and premium, if any) or interest on the Bonds.

(C) If any event of default with respect to the First Resolution Obligations shall have occurred and be continuing (under circumstances when the provisions of (A) above shall not be applicable), the Holders of all First Resolution Obligations then outstanding shall be entitled to receive payment in full of all principal and interest on all such First Resolution Obligations before the holders of the Bonds are entitled to receive any accelerated payment from the Trust Estate of principal (and premium, if any) or interest on the Bonds.

(D) No First Resolution Obligation holder shall be prejudiced in his right to enforce subordination of the Bonds by any act or failure to act on the part of the City and County.

(E) The provisions of (A), (B), (C) and (D) above are solely for the purpose of defining the relative rights of the First Resolution Obligation holders on the one hand, and the holders of Bonds on the other hand, and nothing in this Resolution shall impair, as between the City and County and the owners of the Bonds, the obligation of the City and County to pay to the owners thereof the principal thereof and premium, if any, and interest thereon in accordance with its terms, nor shall anything therein prevent the holders of the Bonds from exercising all remedies otherwise permitted by applicable law or hereunder upon default thereunder, subject to the rights under (A), (B), (C) and (D) above of the Holders of First Resolution Obligations to receive cash, property or securities otherwise payable or deliverable to the holders of the Bonds. Insofar as a trustee or paying agent for the Bonds is concerned, the foregoing provisions shall not prevent the application by such trustee or paying agent of any moneys deposited with such trustee or paying agent for the purpose of the payment of or on account of the principal (and premium, if any) and interest on such Bonds if such trustee or paying agent did not have knowledge at the time of such application that such payment was prohibited by the foregoing provisions.



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ARTICLE X

AMENDING AND SUPPLEMENTING OF RESOLUTION

Section 10.01. *Amending and Supplementing of Resolution Without Consent of Holders of Bonds.* (A) The City and County, from time to time and at any time and without the consent or concurrence of any Holder of any Bond, may adopt a Series Resolution (i) for the purpose of providing for the issuance of Bonds pursuant to the provisions of **Article III** hereof; (ii) to make any changes, modifications, amendments or deletions hereto which may be required to permit the Resolution to be qualified under the Trust Indenture Act of 1939 of the United States of America; or (iii) if the rights of the Holders of the Bonds then Outstanding shall not be materially adversely affected thereby, a Supplemental Resolution (herein defined and referred to as a "Supplemental Resolution") for any one or more of the following purposes:

1. to make any changes or corrections in the Resolution as to which the City and County shall have been advised by counsel that the same are verbal corrections or changes or are required for the purpose of curing or correcting any ambiguity or defective or inconsistent provision or omission or mistake or manifest error contained in the Resolution, or to insert in the Resolution such provisions clarifying matters or questions arising under the Resolution as are necessary or desirable;
2. to add additional covenants and agreements of the City and County for the purpose of further securing the payment of the Bonds;
3. to surrender any right, power or privilege reserved to or conferred upon the City and County by the terms of the Resolution;
4. to confirm as further assurance any lien, pledge or charge, or the subjection to any lien, pledge, or charge, created or to be created by the provisions of the Resolution;
5. to grant to, or to confer upon, the Holders of the Bonds any additional rights, remedies, powers, authority or security that lawfully may be granted to or conferred upon them; and
6. to modify in any other respect any of the provisions of the Resolution.

(B) Except for Series Resolutions authorizing the issuance of Bonds pursuant hereto, the City and County shall not adopt any Supplemental Resolution authorized by the foregoing provisions of this Section unless in the Opinion of Counsel (which opinion may be combined with the opinion required by **Section 10.04**) the adoption of such Supplemental Resolution is

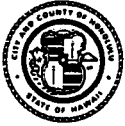


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permitted by the foregoing provisions of this Section and the provisions of such Supplemental Resolution do not materially adversely affect the rights of the Holders of the Bonds then Outstanding.

(C) The City and County shall furnish a notice of each amendment or supplement made pursuant to this Section 10.01 and a copy of the Supplemental Resolution effecting such amendment or supplement to each Rating Agency which has rated the Bonds at least fifteen (15) days prior to the effective day of the Supplemental Resolution.

Section 10.02. Amendment of Resolution With Consent of Holders of Bonds. (A) With the consent of the Holders of not less than a majority of the Bonds then Outstanding, the City and County from time to time and at any time may adopt a resolution amendatory hereof or supplemental hereto (herein also defined and referred to as a "Supplemental Resolution") for the purpose of adding any provisions to, or changing in any manner or eliminating any of the provisions of, the Resolution, or modifying or amending the rights and obligations of the City and County hereunder, or modifying or amending in any manner the rights of the Holders of the Bonds then Outstanding; *provided, however*, that without the specific consent of the Holder of each such Bond which would be affected thereby, no Supplemental Resolution amending or supplementing the provisions hereof shall: (1) change the fixed maturity date for the payment of the principal of any Bond or the dates for the payment of interest thereon or the terms of the redemption thereof, or reduce the principal amount of any Bond or the rate of interest thereon or the Redemption Price (or the redemption premium) payable upon the redemption or prepayment thereof; or (2) reduce the aforesaid percentage of Bonds, the Holders of which are required to consent to any Supplemental Resolution amending or supplementing the provisions of the Resolution; or (3) give to any Bond or Bonds any preference over any other Bond or Bonds secured hereby; or (4) authorize the creation of any pledge of the Revenues and other moneys pledged hereunder, prior, superior or equal to the pledge of and lien and charge thereon created herein for the payment of the Bonds except to the extent provided in **Article III** hereof; or (5) deprive any Holder of the Bonds in any material respect of the security afforded by the Resolution; *provided further, however*, that without the specific consents of the Holders of not less than a majority in principal amount of the Term Bonds then Outstanding and affected thereby, no Supplemental Resolution amending or supplementing the provisions of the Resolution shall (a) change the amount of any Sinking Fund Installments for the retirement of Term Bonds or the due dates of such installments or the terms for the purchase or redemption thereof from such installments, or (b) reduce the aforesaid percentage of Term Bonds, the Holders of which are required to consent to any such Supplemental Resolution. (Nothing in this paragraph contained, however, shall be construed as making necessary the approval of the Holders of the Bonds of the adoption of any Supplemental Resolution authorized by the provisions of **Section 10.01**.) A modification or amendment of the provisions of **Article VI** with respect to the Sewer Fund or the Debt Service Subaccount or Common Reserve Subaccount or any Separate Series Reserve Subaccount or, after there are no longer any bonds outstanding



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under the First Bond Resolution, a modification or amendment to change the designation of Funds, Accounts or Subaccounts and to incorporate the applicable provisions of the First Bond Resolution herein, therein shall not be deemed a change in the terms of payments; *provided* that no such modification or amendment shall, except upon the consent of the Holders of all Bonds then outstanding affected thereby, reduce the amount or amounts required to be credited to the Debt Service Subaccount or Common Reserve Subaccount or any Separate Series Reserve Subaccount or their respective successor.

(B) The proof of the giving of any consent required by this Section and of the holding of Bonds for the purpose of giving consents shall be made in accordance with the provisions of **Article XI**. It shall not be necessary that the consents of the Holders of the Bonds approve the particular form of wording of the proposed amendment or supplement or of the Supplemental Resolution affecting such amendment or supplement, but it shall be sufficient if such consents approve the substance of the proposed amendment or supplement. After the Holders of the required percentage of Bonds shall have filed their consents to the amending or supplementing hereof pursuant to this Section, the City and County shall publish at least once a notice of such amending or supplementing hereof, in *The Bond Buyer*, published in New York, New York, or in lieu of publication in *The Bond Buyer*, in some other newspaper specializing in financial matters printed in the English language and customarily published on each business day and of general circulation in the City of New York, New York, or in a newspaper of general circulation printed in the English language of general circulation in the State, and shall mail a copy of such notice, postage prepaid to each registered Holder of Bonds then Outstanding, at his address, if any, appearing upon the registry books, but failure to mail copies of said notice to any of said Holders shall not affect the validity of the Supplemental Resolution effecting such amendments or supplements or the consent thereto. (Nothing in this paragraph contained, however, shall be construed as requiring the giving of notice of any amending or supplementing of the Resolution authorized by **Section 10.01**.) A record, consisting of the papers required by this Section, shall be proof of the matters therein stated until the contrary is proved. No action or proceeding to set aside or invalidate such Supplemental Resolution or any of the proceedings for its adoption shall be instituted or maintained unless such action or proceeding is commenced within sixty (60) days after the publication of the notice required by this paragraph.

(C) The City and County shall furnish a notice of each amendment or supplement made pursuant to this **Section 10.02** and a copy of the Supplemental Resolution effecting such amendment or supplement to each Rating Agency which has rated the Bonds at least fifteen (15) days prior to the effective day of the Supplemental Resolution.

Section 10.03. Notation Upon Bonds; New Bonds Issued Upon Amendments. Bonds delivered after the effective date of any action taken as provided in this Article may bear a notation as to such action, by endorsement or otherwise and in form approved by the City and County. In that case, upon demand of the Holder of any Bond Outstanding at such effective date



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and the presentation of such Holder's Bond for the purpose at the Principal Office of the Paying Agent or transfer agent hereunder for such Bond and at such additional offices, if any, as the City and County may select and designate for that purpose, a suitable notation shall be made on such Bond. If the City and County shall so determine, new Bonds, so modified as in the opinion of the City and County to conform to the amendments or supplements made pursuant to this Article, shall be prepared, executed and delivered, and upon demand of the Holder of any Bond then Outstanding shall be exchanged without cost to such Holder, for Bonds then Outstanding, upon surrender of such Outstanding Bonds.

Section 10.04. Effectiveness of Supplemental Resolution. Upon the adoption (pursuant to this Article and applicable law) by the City and County of any Supplemental Resolution amending or supplementing the provisions of the Resolution and the delivery to the Director of Budget and Fiscal Services of an Opinion of Counsel that such Supplemental Resolution is in due form and has been duly adopted in accordance with the provisions hereof and applicable law and that the provisions thereof are valid and binding upon the City and County (upon which opinion the Director of Budget and Fiscal Services, subject to the provisions of **Section 7.02**, shall be fully protected in relying), or upon such later date as may be specified in such Supplemental Resolution, (i) the Resolution and the Bonds shall be modified and amended in accordance with such Supplemental Resolution, (ii) the respective rights, limitations of rights, obligations, duties and immunities under the Resolution of the City and County, or any Paying Agent and the Holders of the Bonds shall thereafter be determined, exercised and enforced under the Resolution subject in all respects to such modifications and amendments; and (iii) all of the terms and conditions of any such Supplemental Resolution shall be a part of the terms and conditions of the Bonds and of the Resolution for any and all purposes.

Section 10.05. Supplemental Resolution Affecting Director of Budget and Fiscal Services Hereunder and Paying Agents. No Supplemental Resolution changing, amending or modifying any of the rights, duties and obligations of the Director of Budget and Fiscal Services or any Paying Agent may be adopted by the City and County or be consented to by the Holders of the Bonds without written consent of the Director of Budget and Fiscal Services or such Paying Agent.



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ARTICLE XI

EXECUTION OF INSTRUMENTS BY HOLDERS OF BONDS; OWNERSHIP OF BONDS; MEETINGS OF HOLDERS OF BONDS; EXCLUSION OF BONDS OWNED BY THE CITY AND COUNTY

Section 11.01. *Execution of Requests, Directions and Consents and Other Instruments and Proof of Same; Ownership of Bonds and Proof of Same.* (A) Any request, direction, consent or other instrument required by the Resolution to be signed or executed by Holders of Bonds may be signed or executed by such Holders in person or by an agent or agents duly appointed in writing, and may be in any number of concurrent writings of substantially similar tenor. Proof of the execution of any such request, direction, consent or other instrument or of a writing appointing any such agent, and of the holding or ownership of Bonds, shall be sufficient for any purpose of the Resolution and shall be conclusive in favor of the City and County, the Director of Budget and Fiscal Services and any Paying Agent hereunder with regard to any action taken by them under such request, direction, consent or other instrument or of a writing appointing any such agent, if made in the following manner: the fact and date of the execution by any person of any such request, direction, consent or other instrument in writing may be proved by the certificate of any notary public or other officer in any jurisdiction who, by the laws thereof, has power to take acknowledgments of deeds to be recorded within such jurisdiction, to the effect that the person signing such request, direction, consent or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness to such execution.

(B) Nothing contained in this Section shall be construed as limiting the City and County or the Director of Budget and Fiscal Services, in their separate discretion, to the proof above specified, it being intended that the City and County and the Director of Budget and Fiscal Services in their separate discretion may accept any other evidence of the matters herein stated which to them may seem sufficient. Any request, direction, consent or vote of the Holder of any Bond shall bind and be conclusive upon the Holder of such Bond giving such request, direction or consent or casting such vote and upon every future Holder of the same Bond in respect of anything done or suffered to be done by the City and County or the Director of Budget and Fiscal Services or otherwise, or by the Holders of other Bonds, in pursuance of such request, direction, consent or vote, and whether or not such future Holder has knowledge of or information as to such request, direction, consent or vote; provided that any request, direction, consent or vote of the Holder of a Bond required by any of the provisions hereof may be revoked by the Holder giving such request, direction, consent or vote or by a subsequent Holder, if such revocation in writing is filed with the City and County and the Director of Budget and Fiscal Services prior to the time when the request, direction, consent or vote of the percentage of the Holders of the Bonds required by such provision shall have been given and action taken by the City and County or the Director of Budget and Fiscal Services or otherwise, or by the Holders of other Bonds, under authority of such request, direction, consent or vote.



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(C) Anything in the Resolution to the contrary notwithstanding, the City and County, the Director of Budget and Fiscal Services and any Paying Agent hereunder, may deem and treat the person in whose name any Bond shall at the time be registered on the Bond Registry kept for that purpose pursuant to the Resolution, as the absolute owner of such Bond or coupon for all purposes whatsoever, including payment thereof, and neither the City and County, the Director of Budget and Fiscal Services nor any Paying Agent hereunder shall be affected by any notice to the contrary. The payment of or on account of principal to or upon the order of the person in whose name a Bond shall at the time be registered on said Bond Registry and the payment of interest to or upon the order of any person in whose name any Bond in fully registered form shall at the time be registered on said Bond Registry, shall be valid and effectual fully to satisfy and discharge all liability hereunder, upon such coupons or upon such Bond to the extent of the sum or sums so paid.

Section 11.02. Meetings of Holders of Bonds. (A) The City and County or the Holders or not less than twenty percent (20%) in principal amount of the Bonds then Outstanding may at any time call a meeting of the Holders of the Bonds for the purpose of the consenting to, the approving, the requesting or the directing, by the Holders of the Bonds, of any action required to be consented to or approved by them hereunder or which they may request or direct hereunder to be taken, or for the making by the Holders of the Bonds of any appointments they may make hereunder, or for the purpose of taking any other action which the Holders of the Bonds may take hereunder, or for any other purpose concerning the payment, security and enforcement of the Bonds. Every such meeting shall be held at such place as may be specified in the notice calling such meeting. Written notice of such meeting, stating the place and time of the meeting and in general terms the business to be submitted, shall be mailed to the Holders of Bonds whose names and addresses then appear upon the Bond Registry hereof, by the City and County or the Holders of the Bonds calling such meeting, not less than thirty (30) nor more than sixty (60) days before such meeting, and shall be published at least once on any day of the week, in the same newspapers in which notices of redemption are required to be published by Article V, the date of such publication to be not less than thirty (30) days nor more than sixty (60) days preceding the meeting; provided, however, that the mailing of such notice shall in no case be a condition precedent to the validity of any action taken at any such meeting. Any meeting of the Holders of the Bonds shall, however, be valid without notice if the Holders of all Bonds then Outstanding are present in person or by proxy or if notice is waived before or within thirty (30) days after the meeting by those not so present.

(B) Attendance and voting by Holders of Bonds at meetings thereof may be in person or by proxy. Bondholders may, by an instrument in writing under their hands, appoint any person or persons with full power of substitution, as their proxy to attend and vote at any meeting for them.



CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 98-195, CD1

RESOLUTION

(C) Persons named elected by the Holders of a majority in principal amount of the Bonds represented at the meeting in person or by proxy shall act as temporary Chairman and temporary Secretary of any meeting of Holders of Bonds. A permanent Chairman and a permanent Secretary of such meeting shall be elected by the Holders of a majority in principal amount of the Bonds represented at such meeting in person or by proxy. The Permanent Chairman of the meeting shall appoint two (2) Inspectors of Votes who shall count all votes cast at such meeting, except votes on the election of Chairman and Secretary as aforesaid, and who shall make and file with the Secretary of the meeting and the City and County their verified report of all such votes cast at the meeting.

(D) The Holders of the same principal amount of the Bonds required by other provisions hereof to consent to, approve, request, or direct any action proposed to be taken at a meeting of Holders of the Bonds, or required by other provisions hereof to make appointments proposed to be made at such meeting, or required by other provisions hereof to take any other action proposed to be taken at such meeting, must be present at such meeting in person or by proxy in order to constitute a quorum for the transaction of such business, less than a quorum, however, having power to adjourn the meeting from time to time without other notice of such adjournment than the announcement thereof at the meeting; *provided, however*, that if such meeting is adjourned by less than a quorum for more than ten (10) days, notice of such adjournment shall be published by the City and County at least five (5) days prior to the adjournment date of the meeting in the same newspapers in which notices of redemption are required to be published by Article V hereof.

(E) Any registered Holder of a Bond and any Holders of a certificate provided for in this Section shall be entitled in person or by proxy to attend the vote at such meeting as Holder of the Bond or Bonds registered or certified in his name without producing such Bond or Bonds (unless the Bond or Bonds described in any such certificate shall be registered in the name of or be produced by some other person at such meeting). Such persons and their proxies shall, if required, produce such proof of personal identity as shall be satisfactory to the Secretary of the meeting. All other persons seeking to attend or vote in such meeting must produce the Bond or Bonds claimed to be owned or represented at such meeting.

(F) All proxies presented at such meeting shall be delivered to the Inspectors of Votes and filed with the Secretary of the meeting. The right of a proxy for a Holder of a Bond to attend the meeting and act and vote thereat may be proved by a written proxy executed by such Holder as aforesaid.

(G) Officers or nominees of the City and County may be present or represented at any meeting of the Holders of the Bonds and take part therein, but shall not be entitled to vote thereat, except for such officers or nominees who are Holders of Bonds or proxies for Holders of Bonds.



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(H) The vote at any such meeting of the Holder of any Bond, or such Holder's proxy, entitled to vote thereat shall be binding upon such Holder and upon every subsequent Holder of such Bond (whether or not such subsequent Holder has notice thereof).

(I) Any Supplemental Resolution authorizing the issuance of Bonds in uncertificated form may contain appropriate provisions supplemental to those in this section governing the participation of the Holders of such Bonds in any meetings held pursuant to this section.

Section 11.03. *Exclusion of Bonds Held by or for the City and County and of Bonds No Longer Deemed Outstanding Hereunder.* In determining whether the Holders of the requisite aggregate principal amount of Bonds have concurred in any demand, request, direction, consent, vote or waiver under the Resolution, any Bonds which are owned by or on behalf of or for the account of the City and County and, except for the purpose of **Section 12.01** hereof, any Bonds which are deemed no longer Outstanding hereunder as provided in said **Section 12.01**, shall be disregarded and not included for the purpose of any such determination, and such Bonds shall not be entitled to vote upon, consent to or concur in any action provided in the Resolution. The City and County may require each Holder of a Bond or Bonds before his demand, request, direction, consent, vote or waiver shall be deemed effective, to reveal if the Bonds as to which such demand, request, direction, consent, vote or waiver is made, granted, cast or given are disqualified as provided in this Section.



RESOLUTION

ARTICLE XII

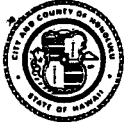
DEFEASANCE; MONEYS HELD FOR PAYMENT OF DEFEASED BONDS

Section 12.01. Discharge of Liens and Pledges; Bonds No Longer Outstanding and Deemed to be Paid Hereunder. (A) Except as otherwise provided in Section 3.10 with regard to Option Bonds, the obligations of the City and County under the Resolution and the liens, pledges, charges, trusts, covenants and agreements of the City and County herein made or provided for, shall be fully discharged and satisfied as to any Bond and such Bond shall no longer be deemed to be Outstanding hereunder:

(i) when such Bond shall have been canceled, or shall have been surrendered for cancellation or is subject to cancellation, or shall have been purchased by or behalf of the City and County from moneys held under the Resolution; or

(ii) as to any Bond not canceled or surrendered for cancellation or subject to cancellation or so purchased, when payment of the principal and redemption price (if any) of such Bond, plus interest on such principal to the due date thereof (whether such due date be by reason of maturity or upon redemption or prepayment, or otherwise) either (a) shall have been made or caused to be made in accordance with the terms thereof, or (b) shall have been provided for by irrevocably depositing with the Paying Agent for such Bond, in trust, and irrevocably appropriating and setting aside exclusively for such payment, either (1) moneys sufficient to make such payment or (2) noncallable Refunded Municipal Obligations or noncallable Investment Securities described in item (i) of the definition of Investment Securities in Section 1.01, maturing as to principal and interest in such amount and at such times as will insure, together with any cash deposit, the availability of sufficient moneys to make such payment, whichever the City and County deems to be in its best interest and as verified by an independent nationally recognized firm of certified public accountants in a report delivered to the City and County and the Director of Budget and Fiscal Services, and all necessary and proper fees, compensation and expenses of the Director of Budget and Fiscal Services and the Paying Agents pertaining to the Bond with respect to which such deposit is made shall have been paid or the payment thereof provided for to the satisfaction of the Director of Budget and Fiscal Services and said Paying Agents.

At such time as a Bond shall be deemed to be no longer Outstanding hereunder, as aforesaid, such Bond, except for the purposes of any payment from such moneys, Refunded Municipal Obligations or Investment Securities, shall no longer be secured by or entitled to the benefits of the Resolution.



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(B) Notwithstanding the foregoing, in the case of a Bond which is to be redeemed or otherwise prepaid prior to its stated maturity, no deposit under clause (b) of subparagraph (ii) of subsection (A) above shall constitute such payment, discharge and satisfaction as aforesaid until such Bond shall have been irrevocably designated for redemption or prepayment and proper notice of such redemption or prepayment shall have been previously published in accordance with Section 5.03 or provision shall have been irrevocably made for the giving of such notice.

(C) Any such moneys so deposited with the Paying Agents for the Bonds as provided in this Section may at the direction of the City and County also be invested and reinvested in Investment Securities, maturing in the amounts and times as hereinbefore set forth. All income from all Refunded Municipal Obligations and Investment Securities in the hands of the Paying Agents pursuant to this Section which is not required for the payment of the Bonds and interest and premium thereon with respect to which such moneys shall have been so deposited, shall be paid to the City and County for deposit in the Sewer Fund free and clear of any trust, lien, security interest, pledge or assignment securing any Bonds or otherwise existing under the Resolution.

(D) Notwithstanding any provision of any other section of the Resolution which may be contrary to the provision of this Section, all moneys, Refunded Municipal Obligations or Investment Securities set aside and held in trust pursuant to the provisions of this Section for the payment of Bonds (including interest and premium thereof, if any) shall be applied to and used solely for the payment of the particular Bond (including interest and premium thereof, if any) with respect to which such moneys and Investment Securities have been so set aside in trust.

(E) Anything in Article X to the contrary notwithstanding, if moneys, Refunded Municipal Obligations or Investment Securities have been deposited or set aside with a Paying Agent pursuant to this Section for the payment of a specific Bond and such Bond shall be deemed to have been paid and to be no longer Outstanding hereunder as provided in this Section, but such Bond shall not have in fact been actually paid in full, no amendment to the provisions of this Article shall be made without the consent of the Holder of each Bond affected thereby.

(F) The City and County may at any time surrender to a Paying Agent for a Series of Bonds for cancellation by it any Bonds of such Series previously executed and delivered, which the City and County may have acquired in any manner whatever, and such Bonds upon such surrender for cancellation shall be deemed to be paid and no longer Outstanding hereunder.

Section 12.02. Bonds Not Presented for Payment When Due; Moneys Held for the Bonds After Due Date of Bonds. Subject to the provisions of the next sentence of this paragraph and to the extent permitted by law, if any Bond shall not be presented for payment when the principal thereof shall become due, whether at maturity or at the date fixed for the redemption thereof, or otherwise, and if moneys or Investment Securities shall at such due date be held by a



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Paying Agent therefor, in trust for that purpose sufficient and available to pay the principal and redemption price (if any) of such Bond, together with all interest due on such Bond to the due date thereof or to the date fixed for redemption thereof, all liability of the City and County for such payment shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of such Paying Agent, to hold said moneys or Investment Securities without liability to the Holder of such Bond for interest thereon, in trust for the benefit of the Holder of such Bond who thereafter shall be restricted exclusively to said moneys or Investment Securities for any claim of whatever nature of his part on or with respect to said Bond, including any claim for the payment thereof. The City and County shall be entitled to receive annually from a Paying Agent all earnings on moneys or Investment Securities held by such Paying Agent remaining unclaimed by the Holders of Bonds. Any such moneys or Investment Securities held by any Paying Agent remaining unclaimed by the Holders of such Bonds for five (5) years after the principal of the respective Bonds with respect to which such moneys or Investment Securities have been so set aside has become due and payable (whether at maturity or upon redemption or prepayment or otherwise) shall upon the written request of the City and County be paid to the City and County, against its written receipt therefor, and the Holders of such Bonds shall thereafter be entitled to look only to the City and County for payment thereof. Before being required to make any such payment to the City and County, such Paying Agents may, at the expense of the City and County, publish in the same newspaper or newspapers in which notices of redemption are to be published pursuant to the provisions of **Section 5.03**, a notice, in such form as may be deemed appropriate by such Paying Agents, listing the Bonds so payable and not presented and stating that such moneys remain unclaimed and that after a date set forth therein any balance thereof then remaining will be returned to the City and County.



RESOLUTION

ARTICLE XIII

MISCELLANEOUS

Section 13.01. *Benefits of Resolution Limited to the City and County and Bondholders.*

With the exception of rights or benefits herein expressly conferred, nothing expressed or mentioned in or to be implied from the Resolution or the Bonds is intended or should be construed to confer upon or give to any person other than the City and County, the Director of Budget and Fiscal Services, and the Holders of the Bonds, any legal or equitable right, remedy or claim under or by reason of or in respect to the Resolution or any covenant, condition, stipulation, promise, agreement or provision herein contained. The Resolution and all of the covenants, conditions, stipulations, promises, agreements and provisions hereof are intended to be and shall be for and inure to the sole and exclusive benefit of the City and County, the Director of Budget and Fiscal Services, and the Holders from time to time of the Bonds as herein and therein provided.

Section 13.02. *Resolution Binding Upon Successors or Assigns of the City and County.*

All the terms, provisions, conditions, covenants, warranties and agreements contained in the Resolution shall be binding upon the successors and assigns of the City and County and shall inure to the benefit of the Holders of the Bonds.

Section 13.03. *No Personal Liability.* No member of the City and County and no officer or employee of the City and County shall be individually or personally liable for the payment of the principal and Redemption Price (if any) of, or interest on, any Bond. Nothing herein contained shall, however, relieve any such member, officer or employee from the performance of any duty provided or required by law.

Section 13.04. *Notice to Bondholders.* Except as is otherwise provided in the Resolution any provision in the Resolution for the mailing of a notice or other paper to Holders of the Bonds shall be fully complied with if it is mailed postage prepaid, to each registered Holder of any of the Bonds then Outstanding at his address, if any, appearing upon the Bond Registry kept pursuant to Article IV.

Section 13.05. *Waiver of Notice.* Whenever in the Resolution the giving of notice by mail, publication, or otherwise is required, the giving of such notice may be waived by the person entitled to receive such notice, and in any such case the giving or receipt of such notice



RESOLUTION

shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Section 13.06. *Official Publications.* Any publication, if any, to be made under the provisions of the Resolution in successive weeks may be made in each instance upon any business day of the week and need not be made on the same day of any succeeding week nor in the same newspaper for any or all of the successive publications, but may be made in separate newspapers permitted by such provisions. If and whenever any publications are required under the provisions of the Resolution to be made in different cities, such publication may be made in separate newspapers or journals permitted by such provisions in each such city. In the event that any required publication in any newspaper cannot be accomplished by reason of suspension of publication or otherwise, notice shall be published in any other newspaper or otherwise given by general news release, wire service or other procedure determined by the City and County or the Paying Agent, in its discretion, to be in the best interest of the Holders of the Bonds.

Section 13.07. *Effect of Saturdays, Sundays and Legal Holidays.* Whenever the Resolution requires any action to be taken on a Saturday, Sunday or legal holiday, such action shall be taken on the first business day occurring thereafter. Whenever in the Resolution the time within which any action is required to be taken or within which any right will lapse or expire shall terminate on a Saturday, Sunday or legal holiday, such time shall continue to run until midnight on the next succeeding business day.

Section 13.08. *Partial Invalidity.* (A) If any one or more of the covenants or agreements or portions thereof provided in the Resolution on the part of the City and County or the Director of Budget and Fiscal Services or any Paying Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, then such covenant or covenants, or such agreement or agreements, or such portions thereof, shall be deemed severable from the remaining covenants and agreements or portions thereof provided in the Resolution and the invalidity thereof shall in no way affect the validity of the other provisions of the Resolution or of the Bonds, but the Holders of the Bonds shall retain all the rights and benefits accorded to them hereunder and under any applicable provisions of law.

(B) If any provisions of the Resolution shall be held or deemed to be or shall, in fact, be inoperative or unenforceable or invalid as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable or invalid in any other case or circumstance, or of rendering any other provision or provisions herein contained inoperative or unenforceable or invalid to any extent whatever.



RESOLUTION

Section 13.09. *Law and Place of Enforcement of the Resolution.* The Resolution shall be construed and interpreted in accordance with the laws of the State of Hawaii and all suits and actions arising out of the Resolution shall be instituted in a court of competent jurisdiction in said State.

Section 13.10. *Effect of Article and Section Headings and Table of Contents.* The heading or titles of the several articles and sections hereof, and any table of contents appended hereto or to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation or effect of the Resolution.

Section 13.11. *Repeal of Inconsistent Resolution.* Any resolution of the City Council, and any part of any resolution, inconsistent with the Resolution is hereby repealed to the extent of such inconsistency.

Section 13.12. *Effectiveness of the Resolution.* The Resolution shall become effective upon its adoption.

RESOLUTION

INTRODUCED BY:

Mufi Hannemann (br)

DATE OF INTRODUCTION:

July 9, 1998

Honolulu, Hawaii

Councilmembers

-98-

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

I hereby certify that the foregoing RESOLUTION was adopted by the COUNCIL OF THE CITY AND COUNTY OF HONOLULU on the date and by the vote indicated to the right.

ATTEST:

Genevieve G. Wong
GENEVIEVE G. WONG
City Clerk

Mufi Hannemann
MUFI HANNEMANN
CHAIR AND PRESIDING OFFICER

Dated 11/10/98

ADOPTED MEETING HELD			
11/10/98			
	AYE	NO	A/E
BAINUM	X		
DeSOTO	X		
FELIX	X		
HOLMES	X		
KIM	X		
MANSHO	X		
MIRIKITANI	X		
YOSHIMURA			4E
HANNEMANN	X		
	8	0	1

Reference: D 778

Report No. B-576

Resolution No.

98-195, CD1